Accountancy

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Professional Notes

Loans for Increasing Productivity

A "REVOLVING FUND" OF £700,000 FOR INDUSTRY AND ONE OF £300,000 FOR agriculture, financed from American economic aid, have been set up. Firms are now invited to apply for loans from the revolving fund for industry. In principle, any project calculated to increase productivity in industry is eligible for a loan. But the limitation upon the available finance means that loans will have to be restricted to projects which will achieve that object quickly, and it is expected that most of the money will go towards installing new equipment and improving the layout of plant. Preference will be given to small and medium-sized firms and to loans which will lead to an expansion of exports or to more efficient production for home needs. No fixed minimum or maximum has been laid down for loans, but applications for less than £30,000 will receive first consideration. Normally loans will be for not more than three years but exceptionally they may be up to five years. The period of a loan, the security required and the rate of interest payable will be matters for negotiation, but it is the intention that the terms should be not less favourable than those obtainable from other sources. This would suggest that the rate of interest is likely to be in the region of 4 per cent.

The Board of Trade is responsible for the administration of the revolving fund and will be advised on applications for loans by an advisory committee under the chairmanship of Sir John H. Woods, G.C.B., M.V.O., a director of the *English Electric Co., Ltd.* Mr. S. J. Pears, F.C.A., is the accountant member of the advisory committee.

An explanatory leaflet giving further particulars and seting out the form in which applications should be made can be obtained from the Board of Trade, Industries and Manufactures Division 2 (Revolving Fund for Industry), Horseguards Avenue, London, S.W.1, or from Board of Trade Regional Offices.

The revolving fund for agriculture will be administered by the Ministry of Agriculture in association with the Scottish Office, advised by an advisory committee under the chairmanship of Sir Stanford Cooper. Applications for loans from this fund have not yet been invited. It is understood that in the first instance they will be confined to the provision of grain-drying equipment, storage equipment, and plant, equipment and working capital for agricultural co-operative societies and some approved associations of farmers.

A Doubter's Doubts About Audit Practice

Mr. J. T. Dowling, C.A., read an interesting paper at a summer school of the Institute of Chartered Accountants of Scotland, in July last. His evident purpose was to provoke discussion, and he did this by posing a series of questions which he left unanswered. We imagine he must have been very successful. Beginning with the balance sheet, he asked questions about valuations and the depreciation of fixed assets; next he raised some disquieting questions on happenings after the date of the balance sheet, but before the date of the auditors' report; finally, he considered some matters arising on the audit programme.

Under the first heading we are reminded once more of *McKesson and Robbins*; this case seems to be a favourite with students, who are quite oblivious of the fact that it is without authority in this country and would

not be accepted here as defining professional practice. Mr. Dowling, of course, does not make that mistake. After this he turns to verification of debtors and creditors and asks how far communications between auditor and debtor and the inspection of creditors' statements are essential to the exercise of proper care and skill; he again makes comparison with American practice. Then there is the thorny question of the valuation of work in progress, especially if costings are not really reliable or even in existence.

The Eighth Schedule of the Companies Act of 1948 requires the disclosure of contingent liabilities, and Mr. Dowling asks questions about the necessity under this heading of disclosing such things as profits tax non-distribution relief received, which in certain circumstances may be withdrawn in a subsequent year. It is, of course, technically correct to reply that the future incurring of a liability to refund relief is not automatic but is within the power of the company itself to determine ; nevertheless it is not unlikely that lay shareholders will assume that the balance of undistributed profits shown in the accounts represents profits available for distribution, and this may not be the case. Similar considerations apply to the probability of sur-tax directions upon the company and to estate duty payable under Section 54 of the Finance Act, 1940 (arising out of Section 46).

Examples are given of liabilities arising after the balance sheet date which might yet be relevant to shareholders' consideration of the balance sheet position, e.g. a substantial debt becoming bad, or a material fall in value of stocks held, or the commitment by the company to future contracts of purchase when prices have now fallen or conversely, future sales when the cost of sales has risen sufficiently to eliminate profit—or worse. It is easy to say that the balance sheet expressly draws a line at its date, but is that a completely satisfactory justification for non-disclosure?

Programme for Productivity

From about 1750 to 1900 British industry led the world in productive efficiency. Since then the rate of progress has been only half that achieved by some other countries. The need to reverse this trend and some measures by which it is hoped to do so are explained in a booklet, *Policy and Programme*, issued by the British Productivity Council (21, Tothill Street, London, S.W.1, price 6d.).

The Council's circuit scheme and the proposed organisation of local productivity committees were the subject of a note in our May issue, on page 138. Forty local committees have been formed or are in process of formation, and their chairmen or representatives met members of the B.P.C. at a conference on July 28. It is hoped that by the end of October committees will be functioning in practically all of the 100 areas originally envisaged. A number of suggestions for their future activities were put forward at the conference : it was agreed that the most important task was to change the attitude of mind of people at all levels in industry.

Some of the representatives suggested that the circuit scheme for the exchange of visits between firms could be more easily administered by the local productivity committees than centrally by the B.P.C. The conference endorsed the Council's plan to show productivity films of general interest at regular intervals on television as well as to make instructional films for use by the local committees. It was explained that financial help would be given for initial and running expenses and for specific projects.

Progress Report on the Footwear Industry

Those who are aware that the British footwear industry sent investigators to the United States of America in 1945 and in 1946 to study developments there before the Anglo-American Productivity Council was formed will not be surprised to find that the recently published *Review of Productivity in the Footwear Industry* (British Productivity Council, 21, Tothill Street, London, S.W.1, price 1s.) is a record of substantial progress. It is stated that productivity in the industry is now 30 or 40 per cent. higher than in 1930. How this has been achieved can best be seen from the record of individual efforts of some twenty-eight firms set out in the appendix.

Tribute is paid to the institutions which serve this industry so well. In addition to the two employers' organisations covering this country it is made clear that the union concerned not only permits work study but is training a number of its officials in this subject. The British Boot and Shoe Institution is a technical and educational body which arranges factory visits at home and abroad, and the British Boot and Shoe and Allied Trades Research Association (" SATRA "), one of the older research associations, has set up an Industrial Division which has carried out some extremely valuable analyses of productivity in various sections of the industry.

The British footwear industry has a high proportion of medium and small firms and many of them take on work as it comes, although the leaders of the industry appreciate that more shoes could probably be produced at lower prices with the same number of employees if firms simplified their ranges and their methods and processes. Accountants unconnected with footwear manufacture will nevertheless find paragraphs 37 to 61, dealing with work study and comparisons of productivity, of considerable interest. It is in this field that most advances have been made since the war. " One company was able to show that after application of work study its total output was increased by some 35 per cent., wages grew by 25 per cent. and output per standard minute rose by *52 per cent.* (the discrepancy between the first and last figures results from the great increase in production of fancy shoes)." The statement, taken from a SATRA report of conclusions to be drawn from its investigations, that " the proportion of day work, without consideration of any other factors, is a fairly reliable index of the productivity of a factory," followed by the argument that " a high proportion of day-work was often a reflection on the standard of managerial efficiency " might well give direction to the efforts of managers in other industries.

De-Nationalising Road Transport

The big job of selling some 35,000 vehicles from the State to private enterprise is to start in real earnest about the end of this month. It is expected that the *Road Haulage Disposal Board* will then put on offer the first road haulage " units," consisting of from one to 50 vehicles at present

owned by the nationalised industry. The Board is, for the present, concentrating upon these sales of units—which, though individually small, involve a number of complications of procedure—and will later turn to the task of forming and then selling companies, each owning a larger fleet of vehicles (see ACCOUNTANCY, June 1953, page 172).

It is reported that the Minister of Transport has been discussing ways of simplifying the financial and legal procedure of disposal. The shortage of finance, another difficulty in the way of a smooth and expeditious transfer of the road haulage industry to private hands, has been mitigated by the recent waiving of the Hire-Purchase and Credit Sale Agreements (Control) Order, 1952. By this waiver, purchasers may make repayments over more than 18 months and may deposit less than one-third of the purchase price. The *Road Haulage Association* and the *United Dominions Trust* have jointly formed a company called *Transport Unit Finance* for extending credit to purchasers. The Treasury has informed the banks that the purchase of road haulage units and company units is a "suitable subject for credit in the national interest."

While the disposal of vehicles is in progress, the road haulage activities of the nationalised industry will be carried on as an undertaking entitled *British Road Services*, to be run by a board of management under the chairmanship of Major-General G. N. Russell, C.B., C.B.E. (now chairman of the *Road Haulage Executive*). So far as the public is concerned, there will be no change or interruption in the course of business. The Board will also continue to manage such road haulage interests as may be retained by the British Transport Commission—it is expected that some 5,000 vehicles will remain permanently in its hands—and to assist in the formation and disposal of units.

A Statutory Instrument will be made to provide, among other things, that all the rights and liabilities of the *Road Haulage Executive* will become the rights and liabilities of the *British Transport Commission*. From a legal point of view the staff, customers and contractors can look to the Commission to discharge all the obligations and to exercise all the rights that at present rest with the Executive.

Accounting Investigations in the Fish Industry

During the second year of its operations, to March 31 last, the *White Fish Authority* began investigations into the costs and earnings of various sections of the industry—inshore fishermen, wholesalers, retailers and fryers. The investigations were carried out partly by qualified staff of the Authority and partly by independent accountants. It is intended to conduct an investigation into the distant water fishing section of the industry in 1953-54.

So far, reports the Authority in its second annual report (Her Majesty's Stationery Office, price 1s. 3d. net), the costings have been voluntary. Some catchers and traders have responded to the Authority's requests with great willingness and representative organisations have lent their fullest support. Others, however, have refused to co-operate, with the result that samples have sometimes been made unrepresentative and the value of the investigation vitiated. The Authority has therefore decided to use its powers under Section 11 of the Sea Fish Industry Act, 1951, which provides for the compulsory keeping of records and furnishing of information. Regulations for this purpose are shortly to be submitted to Ministers.

The report gives the results of the sample inquiry into the operations of inshore fishermen for the years ended July 31, 1951, and July 31, 1952, of coastal wholesalers for the calendar years 1950 and 1951, and of inland wholesalers for the years ended June 30, 1951, and June 30, 1952. The investigations into the costs and earnings of retailers and fryers are still in progress.

Taxation of Interest on P.O. Savings Accounts

As we reported in our issue of last May (page 138), Mr. Stanley A. Spofforth, F.C.A., F.S.A.A., suggested, in his Presidential speech to the Institute of Taxation in April, that a notice should be inserted in the deposit books of Post Office savings accounts warning the holders that the interest is not exempt from income tax but should be shown in returns of income. The Government has now adopted this suggestion so far as concerns new books. The procedure should eventually prove of value to the accountancy profession and it will be advantageous to taxpayers generally. Many persons are still under the delusion that there is some kind of special tax exemption of interest on Government stocks generally, and, in particular, of Post Office Savings Bank interest. The new arrangement should help to obviate incorrect returns of income and thus to make unnecessary a repetition of this year's inquisition into Post Office Savings Bank interest—and the outcry which it aroused.

The Dismal Story of a Costing System

An engineering company, *Rotax, Ltd.*, wished to install in its experimental department, which operated on a day-work basis, a modified cost control system, aimed at recording solely for costing purposes the actual times taken by workers on each component. There were protracted negotiations between the company and the representatives of the unions, and as a result the company undertook that the system would never be used for the introduction of payments by results, that the recorded times would never be used in comparison with estimated times against any workman, that no comparison would be made of the recorded times of workmen against the interests of any of them, and that the arrangement would be only to assist the company in the conduct of its costing system.

These safeguards seem far-reaching enough, but they did not satisfy the members of the unions, to whom they were referred by the union representatives. The company then appealed to the Industrial Disputes Tribunal, stating that a modified cost control system in its experimental department was necessary to enable the company to meet the requirements of the customers for whom development work was carried out. At present only the time spent on the job as a whole was recorded, but the customers needed to know the cost of each component of the job. It was further submitted that a system of individual work records or job cards was not an uncommon practice in the engineering industry.

The unions argued that it was "without precedent for their members working in a department which operates on a day-work basis and where there is no form of work measurement

or bonus payment related specifically to effort or to results of production to be asked to agree to any form of measurement of output." Further, they contended that the company "should have no difficulty in compiling their own records as part of the administrative function of the supervision." They reiterated their fears that comparisons of times, adverse to certain workers, might be made and that with the passage of time the system would lead to the setting up of piecework speeds to the detriment of the workers.

The Tribunal made an award that the workers should accept the operation of the modified cost control system under the safeguards offered. Thus, in this instance at least, technical progress, which was to the disadvantage of none, eventually overcame the obstacles placed in its way by fear and prejudice. But in how many other instances do the obstacles stand firm? And what does this example suggest for the chances of a far-reaching extension of systems of payments by results, one of the surest ways of increasing industrial productivity?

The Rent Acts and New Leases

Premises used partly for the purpose of a trade or business may be controlled by the Rent Acts, if the remainder of the premises is occupied as a dwelling, and if the other conditions for the application of the Acts—such as the rateable value, the proportion of the rent payable to the rateable value, and the like—are present.

When a tenancy of premises of this mixed character is coming to an end, and the question of renewal of the sitting tenant's lease is being considered, an important point ought not to be overlooked—how, if at all, the premises can be taken out of the control of the Rent Acts.

One method is by granting the new lease at a small rent, which is less than two-thirds of the rateable value of the premises, and by charging a premium. There are certain snags to be avoided, however, if the landlord is not to fall foul of the prohibition contained in Section 2 of the Rent Control Act of 1949 with regard to the charging of premiums. If, however, such a scheme is effectively operated, the tenancy can be taken completely out of control.

But partial exemption from control can also be obtained by entirely different means. If the trade or business has been carried on on the premises in such circumstances as to give rise to a possible claim for the grant of a new lease under the Landlord and Tenant Act, 1927, then advantage may be taken of the principle laid down by the Court of Appeal that a controlled tenant enjoys an election. He can choose between continuing in possession as a statutory tenant under the Rent Acts at the controlled rent but with only such security of tenure as those Acts offer, or else being granted a new lease under the Landlord and Tenant Act, 1927, but only at the proper market rental value of the premises, which usually will be considerably higher than the controlled rent. The choice with which the tenant is in fact confronted in such a case is between limitation of rent on the one hand (under the Rent Acts) or a greater measure of security of tenure (under the Landlord and Tenant Act, 1927).

When a landlord is willing to renew the tenancy, and the tenant is willing to pay a higher rent if a lease is granted, care should be taken to secure that the property is freed from the shackles of rent control upon the granting of the lease; for, be it observed, if the proper steps are not taken the tenant will not only be granted a new lease but will also be entitled to call the tune as to the rent he is to pay under the new lease; and he might successfully contend that the controlled rent is the only rent that he can be called upon to pay, notwithstanding the grant to him of a new lease.

In order to free the rent from control in such circumstances, it is necessary that the tenant should make a formal claim against the landlord for a new lease under the Landlord and Tenant Act, 1927, and upon the making of the claim the landlord and tenant can enter into a formal compromise for the settlement of the claim by the grant of the new lease. The necessary recitals and clauses must be inserted in the new lease for this purpose, but this is a matter to be dealt with in each case by the legal draftsman who is drawing up the lease.

The important point to note is that unless the above procedure is adopted the new tenancy will still be completely controlled even as regards the rent payable thereunder.

Shorter Notes

Pre-war Austrian Debts

Persons in the United Kingdom who had pre-war sterling debts due to them from Austria have already been notified of the special arrangements for the notification of these debts, which were contained in a Supplementary Note to the United Kingdom-Austrian Money and Property Agreement. The Note announced the intention of the Austrian Government to facilitate the settlement of pre-war debts due to persons resident or carrying on business in the United Kingdom on or before September 3, 1939, and of making sterling available for transfer for that purpose on an equitable basis to an amount at least equal to that passing to the Austrian Government under the Agreement. The Board of Trade now advise that the Austrian Embassy (18, Belgrave Square, S.W.1) is prepared to accept notification of such claims only up to October 31, 1953. Claims notified after that date may not be included in the special transfer arrangements.

Claims for War Damage Against Japan

Compensation is payable to nationals of Allied Powers for their property which was in Japan on December 7, 1941, and which was destroyed or damaged by the war there. British subjects who wish to make a claim are reminded that they must lodge it with the Japanese Government before October 28, 1953. Anyone who does not already know the procedure for lodging a claim should communicate with the Administration of Enemy Property Department, Lacon House, Theobalds Road, London, W.C.1.

Loans for Fuel-Saving Equipment

The Government's loan scheme for fuel-saving installations has been improved. Expenditure, including capital charges, upon a wider range of fuel-saving equipment and upon structural insulation is eligible for loans, which will be repayable over the tax life of the equipment or structural work, subject to a maximum of 20 years. Loans will be interest-free for two years following the installation and after that will bear interest at commercial rates. The financial transactions will be handled by the Industrial and Commercial Finance Corporation, Ltd. An application form (L.F.S.2—Revised June, 1953) can be obtained from the Ministry of Fuel and Power, Fuel Efficiency Branch, Thames House South, Millbank, London, S.W.1.

ACCOUNTANCY

FORMERLY THE INCORPORATED ACCOUNTANTS' JOURNAL. ESTABLISHED 1889

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Public Accountability

THREE AND A HALF YEARS AGO WE wrote an editorial with this same title, *Public Accountability* (see ACCOUNTANCY, March 1950, page 82). How, we wondered, were the nationalised Boards to be made accountable to the general citizenry, who are both owners and customers of these industrial conglomerations? What safeguards could there be against abuses of monopoly power, what guarantees of efficient operation, what sanctions against bad business policies? The Public Accounts Committee, which does very satisfactory work in watching the financial interest of the public in the Government departments, is ill fitted to conduct "operational audits" of the nationalised industries. But what machinery should be devised for this urgent task?

A Select Committee of the House of Commons, appointed in November 1952, has now reported on the ways in which the House may keep itself informed on the affairs of the nationalised industries (*Report from the Select Committee on Nationalised Industries*, Her Majesty's Stationery Office, price 4s. net). The whole problem closely concerns the accountancy profession in two ways. Firstly, in the narrower but very important sense, the profession is concerned with the scope and form of the conventional financial audit of the nationalised industries. How might the introduction of new procedures which go beyond the financial audit and aim at a check upon the policies and operations of the Boards react upon the financial audit itself? Secondly, in the wider and more general sense, what part should the profession play in the application of these new procedures, in the "operational audit" of the Boards?

It is encouraging that the Select Committee reported that the existing arrangements for financial audits of the Boards by professional auditors should not be disturbed. There is no reason at all why this financial audit should not continue to be conducted in the traditional way. Sir Frank Tribe, the Comptroller and Auditor-General, was asked if he could conduct a financial audit of the nationalised industries. He replied that he could do so, but he deprecated the idea. It would mean he "would have to draw hundreds of professional accountants from the profession and make them civil servants, and many of the largest firms of professional accountants in the country would find their work suddenly and greatly reduced." The Select Committee agreed that the suggestion was inappropriate, both for the reason just quoted and because the audit of Government departments now conducted by the Comptroller and Auditor-General is different in kind from the financial audit of a business undertaking. To our mind, any extension of his audit would be even more dangerous than Sir Frank and the Select Committee averred. It could amount to a threat to the independence of the accountancy profession in the future, for once set the standard that professional auditors are not to conduct the financial audit of the nationalised Boards and how far might the incursion of the official auditor into business ultimately extend?

The Select Committee, while upholding the position of the professional auditors of the Boards, so far as concerns the financial audit, were not disposed to look to them for much help in the wider "operational audit." The auditors might report generally on the financial background of the Boards and on broad policy issues. But:

> The duties of the statutory auditors are those of normal commercial auditors, and it is essential, for the sake of preserving their good relations with the corporations whose accounts they audit, that their approach to those accounts should not differ too widely from those of ordinary professional auditors.

What the Select Committee did propose for ensuring the accountability of the Boards was the setting up by Standing Order of the House of Commons of a select committee "for examining the reports and accounts of, and for obtaining further information as to the general policy and practice of, the nationalised industries." It further proposed that the new committee would be served by a permanent official of a status roughly equivalent to that of the Comptroller and Auditor-General and by the staff of the new officer. It seems to us that the proposal for a new committee is on the right lines, inasmuch as no existing body can perform the functions now required. But it would, we think, be a pity if its membership were confined, as the report would confine it, to members of the House of Commons. There seems to be a strong case for the view—which we expressed in our editorial in 1950—that business men, as well as Members of Parliament, should serve on the new body. There seems no reason why this wider membership could not be reconciled with the responsibility of the committee to Parliament. The Select Committee was unwilling to extend the membership even to peers sitting in the House of Lords, though it recognised the advantages to be gained from the business experience of many members of the Lords and the element of continuity they could bring to the committee.

One further point is important. It is right and proper that the staff of the new body should include accountants. (It is surprising to find the Select Committee specifying that there should be at least one professional accountant. Why one? Surely there would have to be a far greater number if the work were to be done comprehensively?) At the same time, let no one exaggerate the part that accountants should play in the "operational audit." It will need a mixture of skills, and accountants will have to be joined by production engineers, statisticians, economists and others. It is no service to the accountancy profession to claim that it can do more in this new field than its *expertise* allows it to do.

Valuation of Shares in a Private Company

[CONTRIBUTED]

IT IS WELL SETTLED THAT THOSE WHO have a discretion, such as trustees who have powers to maintain beneficiaries and directors who have powers to admit members to a company, can maintain a silence which the Courts will not oblige them to break. If they do maintain that silence no action will lie against them, but if they choose, for whatever reason, to disclose the motives which impelled them to their decision, an interested party may come to Court to impeach those motives. It was held in *Dean* v. *Prince* (1953, 3 W.L.R. 271) that this position is analogous to that of an auditor who, as an expert, is called upon to value shares in a private company. It may well be that his opinion about the fair value of the shares, although wrong in the eyes of others, might prevail, but if he has based himself on an entirely wrong basis and has chosen to explain that basis then his valuation may be questioned. In this case (briefly reported in a Professional Note on page 246 of the last issue of ACCOUNTANCY) the Court held that the principle of the valuation was erroneous and that the valuation was not binding.

The matter arose in this way. A company which carried on a small light engineering business had adopted Table A of 1929 modified in certain respects. One of the articles which had been adopted provided:

> In the event of the death of any member his shares shall be purchased and taken by the directors at such price as is certified in writing by the auditor to be in his opinion the fair value thereof at the date of death, and in so certifying the auditor shall be considered to act as an expert and not as an auditor and accordingly the Arbitration Act, 1889, shall not apply. Unless otherwise agreed the directors shall take such shares equally between them.

In recent years the company had been kept going only because it had recovered Excess Profits Tax and had reserves against taxation which were found not to be necessary for that purpose, and were brought back into the profit and loss account. The balance sheet for the year ending May 1951, showed a trading profit of £1,100 but a net loss of £352, which was due to the emoluments of the then two working directors, the first and second defendants in the action. The plant and machinery, fixtures, fittings and motor vehicles appeared together in the balance sheet at £4,000, being cost less depreciation. The current liabilities were about equal to the current assets, the main liability being £1,300 due to the plaintiff's husband and £800 to the plaintiff herself. Her husband died in November, 1951, and at his death was the registered holder of a controlling interest of 140 fully paid shares of £1 each. The nominal capital of the company was £200 divided into £1 shares, and the remaining 60 shares were divided equally between the first and second defendants. The plaintiff was the sole executrix of the will of her husband.

By a letter dated December 6, 1951, a firm of chartered accountants stated that they had valued the shares of the company as required by the above article and that in their opinion "a fair value for the purpose is £7 per share." The plaintiff claimed that the valuation was misconceived and erroneous, and had been made on an entirely wrong basis.

Valuation Certificate: How Far Conclusive

Although the plaintiff was extremely dissatisfied with the valuation she would, in the judgment of Mr. Justice Harman, nevertheless have been powerless in the matter if the auditors had declined to expand their views. As Mr. Justice Harman put it:

> They should have remembered that silence was golden in a matter of this kind and that, short of fraud or dishonesty, which no one attributed to the auditors in this case, there was no way of questioning that certificate if the auditors declined to give reasons for the result at which they had arrived. It was their opinion. Opinions may differ, but the members of this company had committed themselves, maybe unwisely, to be bound by the opinion of the auditors, and, if those auditors had an opinion which the members disliked or distrusted, so much the worse for them, but they had made their bed and must lie on it.

But, unfortunately for the defendants, the auditors did not keep quiet. They were pressed to explain how it was they arrived at what the plaintiff thought was an incorrect valuation. (The plaintiff knew a good deal about the company, having acted as book keeper and being the owner of the factory where most of the business was carried on.) The auditors answered her solicitors in the following letter:

> We enclose a few notes which we have prepared to show you how the points you raised at our discussion last week have been allowed for in our valuation in so far as we have considered them appropriate. We trust that they will enable you to satisfy Mrs. Dean that £7 per share represented a fair value.

The defendants argued that the certificate was final and binding, and there being nothing wrong with the valuation on the face of the certificate it was not legitimate to go beyond that certificate, and to look at explanations subsequently offered by the auditors, out of kindness or consideration or the weakness of human nature, to show that they in fact proceeded on a wrong basis. This argument did not prevail. If the auditors had chosen to keep silence, the Court could not have requested them to explain their reasons, but they had not been strong-minded enough to do that.

A similar point arose in *Johnson* v. *Chestergate Hat Manufacturing Co., Ltd.* (1915, 2 Ch. 338), which was a case about deducting income tax from profits before arriving at a commission. The agreement was that as soon as the profits had been ascertained and certified by the company's auditors a certain percentage should be paid to the plaintiff. There was a definition of net profits for that purpose, and again

a reference to a certificate by the auditors. Mr. Justice Sargant said: "In my opinion, if I can see that a certificate is given on a wrong principle, then I am not precluded by it from dealing with the matter," and he continued: "The object of such a certificate is to enable the auditors to deal with matters of account, and so on; and here on the face of the balance sheet, and on the face of the certificate, looking at the two together, it seems to me quite clear that the auditors have proceeded upon a wrong principle." He did not, therefore, confine himself to the certificate; he looked at the balance sheet on which it was based and detected that a wrong principle had been applied.

In the last-mentioned case an agreement provided that a manager was to have a fixed salary and also, as soon as the profits of the year had been certified by the company's auditors, a percentage of the "net" profits, and further provided that "net" profits should be taken to mean "the net sum available for dividend as certified by the auditors of the company after payment of all salaries" and certain other items, not specifically including income tax, and the auditors certified the manager's percentage calculated on the amount of profits, less income tax. It was held that in spite of the certificate the manager was entitled to be paid his percentage on the net profits before deduction of tax. The principle which the auditors had not applied in giving their certificate was the following: income tax is such part of the profits of a business as the Revenue is entitled to take, and accordingly should not, in the absence of very special circumstances, be deducted before arriving at the net profits of the business, being itself part of those profits.

Break-up Value and Going Concern Basis

The wrong principle which the auditors had applied in *Dean* v. *Prince* was to value the shares at their break-up value instead of valuing them on a going concern basis. In their "notes on valuation of shares as on November 6, 1951," which the auditors had made available they set out certain figures from the last balance sheet and also what they called trading results. The latter was not quite an accurate expression, for the trading results had shown a profit in each of the last four years, but the profit and loss account in three of them had shown a loss after the deduction of the directors' remuneration. The notes continued:

> In view of these trading results, and taking into account to some extent the difficult position in which the company would be placed if the amounts due to Mr. and Mrs. Dean had to be repaid, it was clear that no value could be put on the shares on a normal going concern basis other than something purely nominal. It became necessary, therefore, to consider the only other basis which could apply; i.e. the break-up value.

This was the core of the whole process through which the auditors had gone.

The partner who attended to the matter gave evidence very candidly, as Mr. Justice Harman found, "but with a lack of appreciation of what he was saying which was quite shocking." He adhered to the view that though the physical assets of the company, if sold under the hammer at auction in a most disadvantageous way, would possibly produce £7 a share, the shares were of no value at all if they were looked at on a going concern basis. With regard to this view Mr. Justice Harman said: "This was, of course, idle nonsense, and, although it was pointed out to him several times that it was so, he nevertheless could not see it and adhered to his view. What he meant was that if one were going to buy a parcel of these shares, or were advising a client who was going to buy them, one would advise him not to buy them except at a nominal price, because, in his view, the company's prospects were poor."

The auditors instructed a local valuer to value the machinery on the break-up basis, and the latter said that he had valued the machines as so many loose chattels to be sold at auction, and that as some of the machines were old they had accordingly only scrap value. He added: "A valuation *in situ* would have been higher, but I was not asked to value on that basis." It was not surprising that his valuation produced a very low amount. The amount was £1,785, and from this sum the auditors took off some £100 for bad debts and also about £300, being the amount of the depreciation on the defendants' own valuation of a large machine purchased by them and standing in the balance sheet at £400. Instead, therefore, of the value which the accounts had presented showing these assets at something like £4,000, they were treated as being worth £1,400, and as there were 200 £1 shares the auditors arrived at £7 a share as the value. It was subsequently discovered that the debt due to Mrs. Dean was some £200 less than they had supposed and that as a result the value of the assets would be raised by £1 a share. In this sort of case a very small error will produce a very large difference.

The view that the auditor took was this: "This company has been struggling and has not made much profit." He said: "I do not think it ever will make a profit. Therefore, the only thing to do is to close it down and to sell its assets by auction next week." But the company had made a trading profit for a number of years; there was no urgency to put an end to its life; it had no creditors who were threatening to destroy it; it had a factory; and it had machinery in that factory *in situ*; the machinery was well maintained, apparently—and yet no inquiry of any sort was made whether the factory and machinery could not be sold as an entirety. At the trial evidence was given that at the material time in the town in question factory space was short, that trade in the light engineering world was good, and that, in the opinion of two of the witnesses, it was quite likely that someone could have been found to make a bid for the whole thing, lock, stock and barrel. One of the largest dealers in second-hand machinery in the country examined the machinery and he valued it at £4,800, which was more than the balance sheet figure by some considerable amount, and he said that that was the value in his opinion of the machinery to anybody entering the factory to take it over.

Even if assets are considered purely on the basis of their physical value, the price must be a very different price if the sale is on the footing that they are ready to operate tomorrow fixed in a factory, than if each piece is uprooted and put in an auction room. The case of *Attorney-General of Ceylon* v. *Mackie* (1952, 2 All E.R. 775) is some illustration of this. It was a case in the

Privy Council, concerning a question of estate duty under a Ceylon Ordinance, and the question was, therefore, of valuing shares, much on the same lines as English shares are valued for English estate duty. It was argued that there had been an error in accepting the balance-sheet method of valuation, because that can only give break-up value, and that it was necessary to find the value of the business as a going concern. Speaking for the Judicial Committee of the Privy Council, Lord Reid said:

> It is true that a purchaser of the shares held by the deceased could have obtained a controlling interest in the company as a going concern, and in their Lordships' judgment it is right to value these shares by reference to the value of the company's business as a going concern. No doubt, the value of an established business as a going concern generally exceeds and often greatly exceeds the total of its tangible assets. But that cannot be assumed to be universally true. If it is proved in a particular case that at the relevant date the business could not have been sold for more than the value of its tangible assets, then that must be taken to be its value as a going concern.

Valuation of Shares Carrying a Controlling Interest

It was for the auditors in *Dean* v. *Prince* to assume that a buyer of an interest, such as for instance that of one of the defendant directors' 30 shares in a private company which was making a loss, was in an unhappy position as he would not get a dividend. But the auditors did not look at the substance of the matter, namely that what was for sale was not 30 shares, or some small parcel of shares, but 140 shares and the right to control the company. It had never occurred to him, and he said so, that it made any difference whether he was valuing a minority or a majority interest. He left that altogether out of his calculations. He did not merely get a valuation on a wrong basis, but he left out of account the question of control. He said that he would have valued a minority parcel of shares on exactly the same lines as a parcel of shares consisting of 140 out of 200. Anybody who purchased the 140 shares in issue would have been in a position to sell all the assets as a going concern as soon as, and how, he chose. He could have turned out the defendant directors, reorganised the factory and put in his own business, or he could have sold the thing lock, stock and barrel.

Admitting that the company had no goodwill, the alternative was not to treat it as being closed down and in urgent need of having its assets sold under a forced sale. It could have been sold as a going concern. That did not necessarily mean that, when so sold, the machinery would fetch more than the value of the assets in the balance sheet, but it depended on how the machinery was sold.

The result of the auditors' valuation in this case was that they treated the company as certainly being broken up the next day, and they treated the buyer as a person who would have no control over the fortunes of the business. In both those things they were held to be wrong.

It is clear that both the principles which Mr. Justice Harman has stressed are likely to have consequences in the practice of share valuation in relation to private companies. It may even be that they will have some influence in the realm of estate duty valuations.

A Matter of Interpretation

[Contributed]

Two papers delivered at the summer school of the Institute of Chartered Accountants of Scotland in July, by Mr. C. I. R. Hutton, C.A., and Mr. Alexander McKellar, C.A., had the same rather uninspired title: "Annual Reports and Accounts of Limited Companies." As the late Will Hay might have said: "Today, we'll do the world!" Naturally enough, with such a wide brief they ranged far and wide, without any central connecting theme. But there was one perhaps startling similarity in that both expressed the view that the Companies Act was being violated. Thus:

(*i*) ". . . in almost every stock list there is always something which there is no intention to realise and which could not in fact be realised at the figure at which it stands in the accounts."

(*ii*) Of the treatment of future tax: "Most companies pay half-hearted homage to counsel by grouping the amount with reserves but making no attempt to show the movements, as required in respect of reserves by paragraph 12 (1) (e) of the Eighth Schedule. A few purists, by methods which confuse any but experts, succeed in showing the movements."

(*iii*) Mr. Hutton regards it as a "technical foul" to show profits attributable to earlier years at their net amount. His contention is that paragraph 12 (1) (c) of the Eighth Schedule requires disclosure of the tax on profits.

(*iv*) "The accounting provisions of the Act have given rise to many difficulties in practice: . . . other difficulties appear to have been disposed of by ignoring the requirement that gives rise to the difficulty."

(*v*) "I believe that directors' reports which do not include even a few words on the state of a company's affairs—e.g. that they are in a good state—are in breach of the Act."

(*vi*) On the state of the company's affairs: "I submit that both in equity and law the shareholders should receive such a statement. . . . If we had a condensed statement could it not suitably be included in the directors' report and thus, in my view, comply fully with the requirements of Section 157?"

(It should be mentioned that from *vi* on we are quoting Mr. McKellar, who examined the accounts of the thirty-three companies whose shares comprise the *Financial Times* Industrials index.)

(*vii*) "Clear presentation was not achieved in twelve cases where no information whatever was given regarding the method of arriving at the amount of particular

fixed assets. This seems to me to be quite contrary to the law on the subject."

(*viii*) "A number of companies leave the shareholder the task of reconciling opening and close amounts [of reserves]. . . . I feel that there is failure to comply with the Act."

(*ix*) "It seems to me, therefore, that it is definitely misleading to include with shareholders' interests any part of that tax [on current profits]."

The Board of Trade view is that it is not its function to interpret an Act of Parliament, but judging by a quotation by Mr. Hutton it is prepared to voice an opinion—in this instance 71 days after the query was put on paper! The accountancy profession, therefore, has a special responsibility. Supposing an irascible shareholder obtained counsel's opinion in favour of some of the points raised above, and could prove that a director (through his legal and accounting qualifications) committed an offence wilfully under, say, Section 149(6). If he took his case to the Board of Trade, would that body seek the £200 fine or maximum six months' imprisonment? Or will the Board of Trade continue to refuse to classify legislation and its interpretation as good, bad and indifferent?

Both authors showed a refreshing awareness of the interest of shareholders and of seeking after truth. For instance, Mr. McKellar prefers the two-sided balance-sheet, and he considers that from the purist view it is wrong to deduct liabilities (whether current or long term) from assets, and that to show a net current assets figure is inappropriate as there are dangers of indiscriminate reliance on the amount.

Mr. Hutton takes leave to disagree with the view expressed by the Stamp-Martin Professor of Accountancy that adequate disclosure to protect investors is more a matter of auditing standards than of statutory compulsion. Instead, he leans "with reluctance" to the view accepted by the Cohen Committee that "while auditors have tended to press for standards in advance of the requirements of the present law, it has been suggested that their hands would be strengthened if the law were to accord more nearly with what they regard as the best practice." Both views contain the implication that the Companies Act does not go far enough, and the proof of this is perhaps to be found in the quotations listed above. If more accountants were to imagine themselves as shareholders without accounting expertise they would undoubtedly be extremely critical of the accounts to which they give their blessing.

Leaves from the Notebook of a Professional Accountant

Married Women (Restraint Upon Anticipation) Act, 1949—II*

By ERNEST EVAN SPICER, F.C.A.

As we stated in the first instalment of this article, the passing of the Married Women (Restraint upon Anticipation) Act, 1949, places a married woman, who happens to be the life tenant of a trust, in precisely the same position as a spinster, a widow, a divorcee or any male life tenant. Thus if in the future she wishes to dispose of her life interest, she is free to do so without having to seek anybody's leave.

The question which we now have to consider is whether this alteration in the law will prove ultimately advantageous or otherwise to married women. We have no desire to be drawn into any political discussion, but as a logical answer to the question cannot be given without taking into account some of the political issues involved, it is, at least, necessary to bear in mind the general tendencies of the age. In doing so, however, we will not fail to "touch the harp gently." In the past, it was deemed to be the duty of every worthy citizen to make whatever provision he could, during his lifetime, for the benefit of his dependants at death. Today, it is regarded by many people as anti-social for any individual to enjoy, to any large extent, the fruits of another's labour.

With income tax and sur-tax rising to 19s. in the pound and estate duty mounting to 80 per cent.—which in practice may often mean 90 per cent. or even 100 per cent.—it is clear that from now onwards very few people will be able during lifetime to accumulate any appreciable amount of capital out of savings, and it is equally clear that very few people will have any substantial fortune to bequeath at death.

If nationalisation be carried to its logical conclusion, the only form of investment which will eventually be

* The first instalment appeared in Accountancy for August, 1953 (pages 252-6.)

available will be Government securities. Thus, the difficult question how to tax capital gains resulting from selling securities at a profit, without allowing any set-off for losses (which appeals so strongly to one section of the community), will automatically solve itself.

To prevent an individual, who still enjoys a fortune, from providing for his dependants during lifetime, a gift tax could be introduced, such as would thoroughly discourage any such idea, and thus we conclude that the question of trusts and settled property is unlikely to prove of any great importance in the future.

If we are right in supposing that the time is fast approaching when nobody will be able to settle property which will produce more than a very modest income, what possible object will there be for creating trusts? Let us consider this matter soberly and dispassionately.

In the past it was not unusual for a father to settle money on his daughters for life, with remainder over to their issue absolutely.

To an outsider, this often appeared illogical and even stupid, because whereas, apparently, he was unwilling to trust his own daughters—whom he knew—with anything save the income from the property, he was perfectly willing to trust his grandchildren—whom quite possibly he did not know—with both the income arising from the capital and the capital itself.

In so thinking, the outsider was, of course, regarding the matter from a wrong angle. The settlor naturally wished to feel assured that his daughters would, in all circumstances, have a roof over their heads and an income sufficient to meet their needs. As to his grandchildren, he felt no such responsibility. If they chose to squander the capital when they got it, that was their " funeral " and not his. His daughters, however, must be protected from imprudent action and, as far as possible, from undue influence on the part of sons-in-law, whom, in common with most fathers-in-law, he (in all probability) cordially disliked.

As things have turned out, however, the settlor's good intentions have in most cases been largely frustrated.

Owing to the high rates of taxation in recent years the annual net spendable income has been reduced so drastically as to render it not only quite impossible for the daughters to maintain anything approaching the standard of comfort to which they had been accustomed, or which their father wished them to enjoy, but also in many instances impossible even to meet their obligations. Thus until the passing of the Married Women (Restraint upon Anticipation) Act, 1949, they often found themselves in a very embarrassing position.

It is suggested, therefore, that in the future a father, who still has money to bequeath, will probably decide to trust his daughters—whom he loves—rather than a Government—which he hates—and leave them capital rather than a mere life interest. Henceforth, grandchildren are not likely to get much of a " look in," and even the fortunes which children will be permitted to inherit will, doubtless, be strictly rationed.

We repeat, therefore, our conviction that the days of family trusts are drawing gently to a close.

But let us not attempt to delve too deeply into the future. We have no wish to depress the spirits of our readers unduly, for the end is not yet, and Mr. Greatheart still has some rich clients.

Let us therefore consider what steps are being taken by life tenants at the present time to overcome some of their difficulties now that the Married Women (Restraint upon Anticipation) Act, 1949, is on the Statute book. We choose an example from our notebook which not only illustrates the matters which we have in mind, but also demonstrates the interesting fact that financial acumen is not necessarily the sole prerogative of the laity.

ILLUSTRATION

The Rev. Stephen Collins was often heard to declare that his life had been one long succession of disappointments and blighted hopes, and that he would go to the grave a poverty-stricken and disillusioned man.

We feel sure that the hearts of many of our readers will bleed for this persecuted martyr, for have we not had occasion, in the past, to refer to some of the cruel losses which he has been forced to suffer?

On the other hand there are some few, including Mr. Charles Greatheart, who declare that the expression " poverty-stricken " is—in ecclesiastical parlance—a relative term.

Now, although we have never had an opportunity of examining any of Mr. Collins' tax returns, we do happen to know that, until quite recently, Mrs. Collins enjoyed the life interest in a trust fund, approximating £100,000, which was invested at an average rate of about 4 per cent. per annum. We also chance to know that her five daughters were named in the trust deed as remaindermen.

We feel, therefore, that Mr. Greatheart's comment regarding the meaning of the term " poverty-stricken " may not be wholly without foundation.

We have stated that Mrs. Collins enjoyed this income until quite recently, and it may be that some of her ardent admirers may misunderstand our use of the past tense in this connection. Let us therefore hasten to inform them that this saintly woman is enjoying the best of health and that notwithstanding the fact that she has already celebrated her sixtieth birthday, Mrs. Crawler, the curate's wife, was able to assure her, only last Thursday, that she did not look a day older than her eldest daughter, Miss Castilda Collins.

How then is it that we refer so blithely to the past, which is past, rather than to the future, which will presently pass, or to the passing present which will presently pass too?

It is clear that some action must have been taken, but in order to appreciate to the full what that action was and why it was taken, it is necessary to consider Mrs. Collins' position both prior and subsequent to the passing of the Married Women (Restraint upon Anticipation) Act, 1949.

(A) *Position prior to the passing of the Act.*

As life tenant of the trust Mrs. Collins enjoyed an

income approximating £4,000 per annum (subject to the payment of income tax and sur-tax) but she could not alienate this income in any manner whatsoever without the leave of the Court.

Note:—Mr. Collins had consulted learned counsel on this matter and had been assured that in no circumstances would the Court grant any relief from the restraint without a full knowledge of Mrs. Collins' financial position apart from this life interest.

No application was, therefore, made to the Court, because Mr. Collins was strongly of opinion that any publicity given to his wife's income would prove highly undesirable.

On the death of Mrs. Collins, Estate Duty at a rate not less than 50 per cent. would be payable out of the capital of the trust, which would leave available to each of her five daughters a sum not exceeding £10,000.

Note:—Mr. Collins made very particular inquiries as to whether some measure of relief was not granted by the Act or by custom to the wife of a clergyman of the Established Church of England, and received a curt reply in the negative.

(B) *Position subsequent to the passing of the Act.*

With the passing of the Act, all restraint upon anticipation was abolished and thus Mrs. Collins was free to alienate the income, to which she was entitled as life tenant of the trust, in any manner she pleased.

Two very different proposals were submitted to her for her consideration, as follows:

(I) *Sale of future income to a Reversionary Company*

It was pointed out to Mrs. Collins that according to the mortality tables, she had an expectation of life of 17 years, and as she enjoyed excellent health and was thus a "good life" from an insurance point of view, she could sell her future gross income of £4,000 per annum to a reversionary interest company for a capital sum down of approximately £29,600.

Now in order to be in a position to advise Mrs. Collins as to the benefit which would accrue to her as a result of the acceptance of this offer, it would be necessary to know —at any rate approximately—the amount of the joint statutory income of Mr. and Mrs. Collins.

We have already stated that we have no certain knowledge of this, but Mr. Greatheart has assured us that it cannot be less than £9,000 per annum. Working on this assumption we find that the sale of gross income of £4,000 per annum would result in a reduction of net spendable income of £900 per annum, arrived at as follows:

A gross income of £9,000 per annum after taxation yields	£3,138 per annum
A gross income of £5,000 per annum after taxation yields	2,238 „ „
Sale of £4,000 per annum gross income reduces spendable income by	£900 per annum

The value of £900 per annum net spendable income over a period of seventeen years, discounted at 3 per cent., amounts to £11,844. Thus the difference between this figure and £29,600 (the amount offered by the reversionary company) namely, £17,756, represents the true benefit which would accrue to Mr. and Mrs. Collins as a result of accepting the offer.

In other words Mrs. Collins would be exchanging an uncertain net spendable income of £11,844, receivable over a period of 17 years, for an immediate capital sum of £29,600.

It was certainly a tempting offer and Mr. Collins gave the matter long and earnest consideration. Eventually, however, he rejected it for two very sound reasons :

(*a*) The proposal in no way reduced the amount of estate duty payable on Mrs. Collins' death. In fact, in certain circumstances the amount of duty payable might even be increased.

(*b*) By a coincidence, which Mr. Collins felt bound to attribute to a direct intervention on the part of Providence, he happened at this time to obtain particulars of a scheme which, from his point of view, was infinitely superior to any sale of future income to a reversionary company.

We will now proceed to explain the scheme, which later Mrs. Collins adopted in its entirety.

(II) *Purchase of Trust Fund by the Life Tenant*

It has already been explained that on the death of Mrs. Collins, the capital value of the trust would be subjected to a rate of estate duty not less than 50 per cent. and possibly more, and that the balance available to her five daughters, in equal shares, would certainly not exceed £50,000.

What then is the maximum present value of this reversionary interest, bearing in mind that Mrs. Collins has an expectation of life of 17 years? It is £30,200, namely £50,000 discounted at 3 per cent. for 17 years. If, therefore, anybody offered £30,200 down or anything in excess of this figure to the five daughters of Mrs. Collins, they would indeed be very foolish if they did not grasp it with both hands, because the rates of estate duty are much more likely to be increased than reduced.

Why then should not Mrs. Collins herself, the life tenant, offer to buy out the remaindermen, or, in other words, her five daughters? She alone, with absolute safety, could offer them a sum exceeding £30,200 and assuming they all agreed, which of course they would, and the scheme were carried through, this would end the trust.

Mrs. Collins would take over the whole of the investments (which we are assuming to be worth £100,000) and would buy out her daughters out of the assets so acquired. The balance remaining would then represent the capital sum which she would receive in lieu of her life interest of £4,000 per annum gross or £900 per annum net.

What possible exception could be taken to a scheme

which at once satisfied everybody, which cost practically nothing at all, and which above all relieved the Rev. Stephen Collins of anxieties which were fast becoming unendurable?

Had Mrs. Collins been a younger woman capable of giving to her husband further pledges of her affection, involving the reopening of the vicarage nursery, the scheme would have had to be abandoned, because in such circumstances the interests of these little strangers could not be ignored. As matters stood, however, this impediment did not arise, and as all the five daughters had long since passed the stage of legal infancy, all was plain sailing and the signal " full steam ahead " was given by Mrs. Collins with the approval of her husband.

The only outstanding question to be determined was whether Mrs. Collins should or should not pay out to her daughters a sum in excess of £30,200.

It was a difficult question for poor Mr. Collins to decide, for he found himself torn between conflicting interests.

On the one hand he objected, on principle, to the idea of his wife parting with any of her capital, because he had always regarded this as his own. On the other hand he shuddered at the thought of the immensity of the estate duty, which would be payable on her death should she predecease him.

For several days he pondered over the matter, when, of a sudden, while listening to a tedious discourse delivered by his curate, the Rev. Cuthbert Crawler, he had an inspiration.

He decided that £45,000 should be the sum which Mrs. Collins should pay to her five daughters. Each daughter would thus receive £9,000 capital which, invested at 4 per cent., would produce a gross income of £360 per annum, equivalent to a net spendable income of £198 per annum.

Mrs. Collins could then charge each daughter the sum of £180 per annum for board and lodging, and in this manner would recoup the loss of the £900 per annum net spendable income which she had previously enjoyed from the trust. This would leave each of the five girls with £18 per annum additional pin money which, together with the income each of them already enjoyed, which he felt sure did not fall far short of £60 per annum, should prove amply sufficient for their simple needs. In addition he calculated that there would be some income tax recoverable.

As regards the remaining investments of the estimated value of £55,000, he would advise his wife to transfer them into his own name.

Even if Mrs. Collins died five minutes after the transaction had been completed no estate duty would be payable on the £45,000, and provided she lived for five years, no estate duty would be payable on the £55,000.

Altogether he felt that he had solved the riddle of the Sphinx.

The girls would get £45,000 of capital, which was far more than they would get in any other way. Mrs. Collins would continue to receive her £900 per annum spendable income and thus would not lose one penny piece, whilst he would receive £55,000 as a reward for what he had done to bring about this happy result.

Immediately the service was concluded he hastened home to inform his wife what he had decided should be done and to receive uxorious felicitations.

Great, therefore, was his astonishment and vexation when Mrs. Collins expressed herself as far from satisfied with this arrangement, arguing that if he predeceased her, the £55,000 (which was her money) would be subjected to a rate of discount or estate duty, or whatever he liked to call it, such as would render it wholly unrecognisable in her hands when eventually she got it back.

As our readers will readily appreciate, Mr. Collins was not the man to sit down under a rebuff of this nature.

He informed her that her reference to his death—influenced as it undoubtedly was by base and wicked thoughts—had caused him unspeakable pain and that he would regard himself as a " traitor to his cloth " if for one moment he failed to rebuke her for confounding things pure and spiritual with things evil and material. He could permit no further discussion on the subject, but, as an earnest of the great love he bore her, he was willing to meet her half-way by apportioning the £55,000, as to £50,000 to himself and £5,000 to her, subject to the payment by her of the professional charges.

And this was the manner in which the trust was broken and the spoils divided.

Thus, by a judicious intermingling of Christian fortitude and Christian forbearance, did Mr. Collins find the perfect solution to a very perplexing problem. It had cost him much heartburning but he had never wavered.

He had been cruel, only to be kind.

And what about Mrs. Collins? Did she not throw her arms around her husband's neck; press him to her ample bosom; beg his forgiveness for her cruel words and thank him for his unexampled act of generosity? What delicious pain do we not enjoy:

When we fall out with those we love
And kiss again with tears.

And what of the five daughters? Did not they vie with one another to comfort the heart of their poor father, as, sadly, he reclined that evening in his leather cushioned chair before the open fire? Did not their souls yearn for him as, silently, he sat communing with his secret thoughts? Not frowningly, no, no,

A countenance more in sorrow than in anger.

What more do we see, we, who are privileged to lift the veil?

We see Castilda warming the good man's slippers with a lighted spill; Gertrude skimming the milk for cream to lubricate his coffee; Esmerelda, ever watchful, with the vintage port in hand; Caroline, with nimble fingers, piercing his choice cigar with a sharpened bodkin; and little Phœbe, the darling of his heart, playfully tickling the tip of the episcopal proboscis with a peacock's feather.

Let us leave our friends in this moment of unmixed happiness, when Mercy and Truth are met together and Righteousness and Peace have kissed each other.

[*Concluded.*]

Losses and Section 341

(as amended by Section 15, Finance Act, 1953)

The new rules allowing for a loss being set either against the income of the spouse sustaining the loss or against the joint income of husband and wife raise some interesting possibilities, involving careful consideration of all the facts and figures before a decision is made.

Consider a case like this for 1953-54:

	Husband	*Wife*	*Total*
Earned Income ..	£3,000	£720	£3,720
Earned Income Relief (E.I.R.)	450		450
	2,550		3,270
Unearned Income ..	600	500	1,100
	3,150	1,220	4,370
Reliefs:			
Personal (P.R.) £210		120	
Children (C.A.) 170			
Life Assurance Premiums £400 (L.A.R.) 160			
	540		660
	£2,610	£1,100	£3,710

At	£	£	s.	d.	£	£	s.	d.
2/6	100=	12	10	0	100=	12	10	0
5/-	150=	37	10	0	150=	37	10	0
7/-	150=	52	10	0	150=	52	10	0
9/-	2,210=	994	10	0	700=	315	0	0
Tax borne		1,097	0	0		417	10	0

£1,514 10 0

In 1953-54, the husband's business had a loss for income tax purposes of £4,050.

Alternative Workings:

	A. Claim against Joint Income			*B. Claim aginst Husband's Income only*	
Earned Income, Husband	£3,000				
Unearned Income Husband	600				
	3,600				
Less loss (part) ..	3,600				
	nil			nil	
Wife's earned income	£720			£720	
Less balance of loss	450	Memo			
	270	£270			
Unearned Income, Wife	500				£500
	770				
E.I.R. .. £ 60		£60	£160		
P.R. 210				£210	
Addl. P.R... 120		120	120		
		180			
C.A. .. 170				170	
L.A.R.					
(*a*) (1/6th £770) ×					
2/5ths .. (*a*) 52					
(*b*) (1/6th £1,220) ×					
2/5ths .. —	612	—	280 (*b*)81	461	
	£158	£90	£440	£39	

£158 at 2/6	£	s.	At	£	£	s.	£39	£4	17 6
	19	15	2/6	100=	12	10			
			5/-	150=	37	10			
			7/-	150=	52	10			
			9/-	40=	18	0			
					120	10			

	£	s.	d.
Tax as above £1,514 10	Total 125	7	6
	1,514	10	0
£1,494 15	£1,389	2	6

With £450 loss to be carried forward.

If in this case, the whole of the husband's earned income came from the business and the other income was unchanged, for 1954-55 the business assessment would be nil and the question would be whether to claim under Section 15 of the Finance Act, 1953, the extension of Section 341 or to carry the loss forward against future business assessments. The decision would take into account rates of tax, future estimates of profits and the effect on sur-tax, etc. Probably a claim under Section 341 would be made, as, if the reliefs remain unchanged, the unearned income remaining would absorb the reliefs not attributed to the wife's earned income.

A somewhat different set of facts may now be considered :

	Husband	*Wife*	*(Memo.)*	*Total*
Earned	£1,500	£300	£300	£1,800
Unearned		100		100
		400		1,900
E.I.R. .. £334	£ 66		£400	
P.R. 210	120		330	
	544	186	186	730
	£956	£214	£114	£1,170

		£	£	s.	£	£	s.	£	£	s.
At 2/6	100=	12	10		100=	12	10	2 10=	25	0
5/-	150=	37	10		14=	3	10	164=	41	0
7/-	150	52	10		—			150=	52	10
9/-	556=	250	4		100=	45	0	656=	295	4
		£352	14			£61	0		£413	14

Loss by husband, £2,000

If claimed against joint income	If claimed against husband's income only
Total Income £1,900	Husband's income £1,500
Less part loss 1,900	1,500
(No tax liability)	

	Wife	Earned	Unearned
	£300	£100	
E.I.R.	£ 67		
P.R. (£210)	110		100
Addl. P. R.	120	297	
		£3	
		£3 at 2/6=	£ 0 7 6
		Tax borne	413 14 0
Tax Repayable	£413 14 0		£413 6 6
Balance of loss to carry forward	£100		£500

Taxation Notes

Capital Profits

IT IS NOT DISPUTED THAT A "DIVIDEND" paid out of the profit produced by the sale of a capital asset is not made out of the profits or gains charged on the company. No deduction of income tax can be made, nor is such a dividend to be taken into the shareholders' income for sur-tax purposes. *Cf. Neumann* v. *C.I.R.* (18 T.C. 332, 363 H.L.)

Nevertheless, the company may pay additional taxation as a result of paying such a dividend because: (1) it is a distribution for the purposes of profits tax and will, therefore, cause tax to be paid at the "distributed profits" rate instead of the "retained profits" rate on the profits affected by the net relevant distribution; if the net relevant distribution exceeds the profits of the period, a distribution charge to take away past non-distribution relief will follow; and (2) it is a distribution for Excess Profits Levy, to be taken into account in calculating the undistributed profits or over-distribution of profits, although the capital profit itself is not taken into account; this is a defect that ought to have been remedied.

It is well to bear in mind, however, that a dividend paid out of capital profits of a foreign company, received by a resident liable to tax in the United Kingdom, is chargeable under Case V, Schedule D (*C.I.R.* v. *Reid's Trustees*, 30 T.C. 431, 437 H.L.). The distribution arises from the fact that the

shareholder of the foreign company is directly assessable on " income arising from a possession out of the United Kingdom." The source is his shareholding which remains intact.

Clitas and *Simon*

These two invaluable services to those who must keep up-to-date in taxation matters continue to live up to their promises. *Clitas* issued the 11th release in June and the 12th in August, dealing with the Finance Act, 1953. *Simon* made the 3rd issue of new matter, followed by a booklet surveying the Finance Act. The 4th issue no doubt follows hard on it.

Waived Director's Fees—Gifts *inter vivos*?

Here is a pretty problem for those with a legal turn of mind! It is not just a quibble to amuse, nor is it a mere excuse for a paragraph in these notes; it has been raised seriously and we commend its discussion to our readers.

From the income tax viewpoint, now that Schedule E is under P.A.Y.E., income tax is deductible from director's fees as soon as they are paid or credited to the director, whichever event first occurs. Once he has assumed dominance over the fees, therefore, they become his property, and if he then returns them to the company, they have the semblance of a gift (though waiver cannot be enforced unless there is either consideration or a waiver under seal). Waiver before that point appears to take the form of a new contract and there would be no gift! Is that the law, however? Readers may care to discuss the problem.

Artificial Transactions, etc.

In the profits tax legislation, it is provided that no deduction is to be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced the profits or created or increased a loss or would have either effect.

The rule seems to have little effect. Whether or not a transaction is artificial seems to be a question of fact, but such a transaction implies unreality which might border on fraud.

A transaction entered into in good faith, where the documents are intended to be acted on and do in fact operate in their legal form, is not artificial (*Cf.* the *Westminster* case, 19 T.C. 510). It would be different if the transaction were a cloak concealing an entirely different transaction, and never intended to have effect. But such a " transaction " would have no effect, even apart from the rule mentioned above.

Much more important are the provisions of Section 32, Finance Act, 1951, which catch almost any transaction designed to lower profits tax liability, and under which artificiality would be caught just as much as a real transaction. There are also the restrictions on change of residence of companies, etc., in Section 468, Income Tax Act, 1952, and those affecting sales between associated companies in Section 469—far from " artificial " though the transactions may be, they do not save tax!

Pension Funds—Refunded Contributions, etc. in 1953-54

Owing to the decrease in the standard rate to 9s., where an approved pension fund deducts from refunded contributions and commutations the whole amount it has to pay for income tax, the rate deductible is 9/89ths or £0·1011236 of the gross refund.

This is because the fund has to pay one-fourth of the standard rate (i.e. 2s. 3d. in the £) on the sums refunded (with interest, if any).

Proof

	£	s.	d.
Gross refund	100	0	0
Deduction to meet the income tax payable (9/89ths of gross)	10	2	3
	£89	17	9

£10 2s. 3d. is tax at 2s. 3d. in the £ on £89 17s. 9d.

Multiple Taxation

Relief from double taxation in the United Kingdom is based on the principle of tracing all income to its source. This involves the Commissioners of Inland Revenue in the task of examining dividends received from foreign companies to find the origin of the income and the taxes in the country of origin.

A dividend from a company in one territory may include income derived from another territory, in which case the tax credit extends to the taxes in both those territories. In multiple cases there is, of course, a limit beyond which it is not worth while going, but in the case of the large world-wide concerns the Inspector of Foreign and Colonial Dividends usually has the necessary information. Delay is inevitable and the taxpayer can only get the information through the Inspector of Taxes.

Where an ordinary dividend from a foreign company includes income derived from sources liable to United Kingdom tax, Section 201 of the Income Tax Act, 1952, gives proportionate relief. No relief is given to preference shareholders.

Losses and Schedule E

It is not always appreciated that Section 341, Income Tax Act, 1952, applies to Schedule E as well as to Schedule D. Losses under Schedule E can arise where a commercial traveller has to share bad debts, a commission man on the Stock Exchange has a bad year, etc. The extension of such claims to the year following the loss (Section 15, Finance Act, 1953) will be welcomed in some such cases, particularly since Section 342, which provides for carrying forward losses, does not apply to Schedule E.

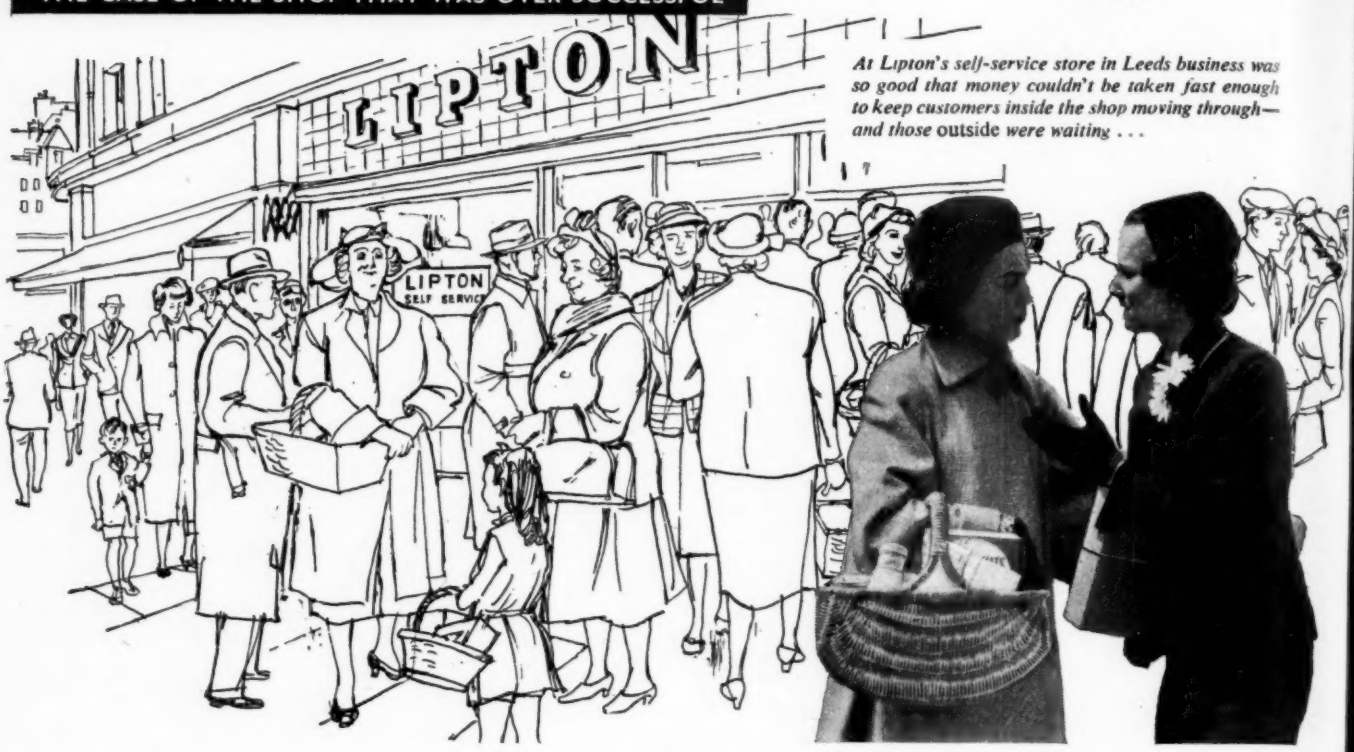
Income Taxes in the Commonwealth, Vol. II

The second volume, now issued by H.M. Stationery Office, of the digest of the laws imposing taxes on income in the Commonwealth covers the Isle of Man, Channel Islands, Southern Rhodesia, Colonies, Protectorates, etc., and Trust Territories, based on laws received up to August 1952. Annual supplements are to be issued.

The companion Volume I was reviewed in ACCOUNTANCY in January 1952, page 31, and the first supplement to it in April 1953, page 120.

Not only will the new volume be of great help to those who have to deal with taxes in the territories in question, but it makes most interesting reading apart from the purely " technical " angle. It is quite an advertisement for places the names of which may send us to search our atlases. Antigua charges companies at 5s. 6d. in the pound, and individuals at 6d. in the first £100 of

THE CASE OF THE SHOP THAT WAS OVER SUCCESSFUL



At Lipton's self-service store in Leeds business was so good that money couldn't be taken fast enough to keep customers inside the shop moving through—and those outside *were waiting . . .*

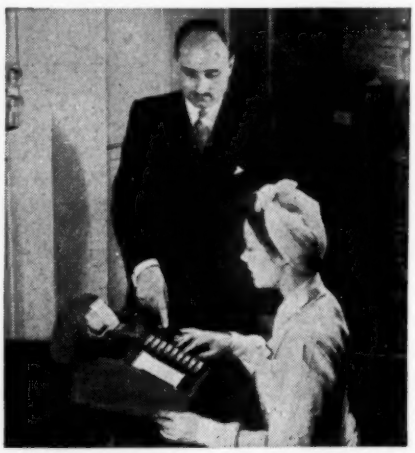
Getting customers in was easy—but not getting them out!

LIPTON LTD., the famous grocers, were quick to accept a popular demand for provisions sold on a self-service basis. But, in one of the shops they opened—in Leeds—the very popularity of this way to shop was causing the management some concern.

Space was limited, and it was essential that when shoppers had made their purchases they should be able to pay for them quickly and make room for new customers. But at the check-outs—that part of the store where the value of goods is totalled, cash taken, and receipts issued—there were hold-ups. However hard the staff worked it was proving impossible to handle transactions fast enough to get customers through the check-outs without congestion.

With this problem, Liptons invited Burroughs' collaboration in an experiment, asking one of their machine-accounting specialists to demonstrate a Burroughs Itemizing Cash Registering Machine *in action*. The speed at which one girl could use the machine to register purchases, give tickets and change, was timed.

Result: So satisfactorily did this Burroughs machine work under pressure, that Lipton Ltd. installed one straight away (later two more) in their Leeds shop. The increased speed it has brought to transactions there—and the consequent improvement in customer relations—has led to the installation of similar machines in other self-service stores operated by Lipton Ltd.



Seen demonstrating the use of a Burroughs Itemizing Cash Registering Machine is Mr. Paul Stark, the Burroughs representative who helped Lipton Ltd. to solve the Case of the Shop that was Over Successful.

What about you? If your business could benefit from faster, accurate figuring, call in Burroughs. They can offer advice on all the latest systems, for Burroughs market the world's broadest line of modern record-keeping machines: Adding, Calculating, Accounting, Billing and Statistical Machines, and Microfilming Equipment. Remember, once you have any Burroughs machine, Burroughs Service *guarantees* its efficiency in operation.

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chargeable income, increasing by steps until income over £1,500 is taxed at 13s. 6d., and the personal reliefs are not generous. Dominica reaches 10s. in the pound on income over £2,900. The Isle of Man reaches 5s. in the pound plus sur-tax, 6s., Northern Rhodesia 7s. 6d., St. Vincent 78 per cent.; Uganda allows a married man £350, and the top rate is 5s. in the pound; and so we go on to Zanzibar, with a top rate of 5s. but a sur-tax reaching 11s. The children follow the mother, and most of them are catching up faster than the residents would like!

Wear and Tear Allowances

A revised edition of *Income Tax: Wear and Tear Allowances for Machinery or Plant—List of Percentage Rates* has been published by Her Majesty's Stationery Office, price 9d. net.

The previous list was reproduced in ACCOUNTANCY for June 1950 (pages 197-205), and subsequent alterations and additions were given in our issue of January 1952, page 33. The new list makes the following further amendments:

Heavy Clay Industry (including Building Brick Manufacture). The rates given in 1952 for the alternative (straight line) method are no longer included.

Joinery Manufacture. General manufacturing plant, 10 per cent. This is a new item from 1952-53.

Timber Merchants, etc. General sawmilling machinery or plant, 10 per cent. from 1952-53. Previously 9½ per cent. for 1947-48 and 1948-49 and 7½ per cent. since.

Trawler Owners. The rates on the straight line basis remain as for tankers. A rate of 12 per cent. is now given for the reducing balance method.

All percentages are, as before, to be multiplied by 5/4 in computing allowances.

Gifts *Inter Vivos*

A gift made during a man's lifetime is subject to estate duty on his death, being "deemed to pass," if—

(*a*) Made for charitable or public purposes within one year of death;
(*b*) made to any other person within five years of death;
(*c*) made subject to a reservation;
(*d*) revocable;
(*e*) imperfect;
(*f*) a *donatio mortis causa*, i.e. a death-bed gift intended to take effect only if the donor dies as he expects he is about to do.

The following gifts escape duty:

(i) Gifts made in consideration of marriage. This covers all wedding presents and settlements.

(ii) Gifts which are part of the normal expenditure of the donor and reasonable having regard to his income and the circumstances.

(iii) Gifts not exceeding £500 in total to any one donee in the statutory period, provided settled property is not included.

(iv) Gifts not exceeding £100 in total. This is only relevant where there are gifts with reservation or of settled property, which must be included in the £100.

(v) Gifts to the Crown or State.

A sale or other dealing with the property does not affect the principle of liability.

Hitherto the valuation of a gift has proceeded as follows:

(1) Settled property at the value of the investments representing the fund at the date of death (*Re Payne*, 1940, Ch. 576).

(1) Absolute gifts at the value of the specific property on the date of death, whether still in the hands of the donee or not (*Strathcona* v. *C.I.R.*, 1929, S.C. 800).

(3) If the subject matter has been destroyed or has perished before the death (e.g. the gift of a racehorse which predeceased the donor), at nothing. (See the *dicta* in *Strathcona* v. *C.I.R.*)

(4) Any improvements made by the donee or his successors to the property, e.g. building a house on a plot of land, should be ignored.

(5) A gift of money at the amount given.

(6) On an out and out gift of shares, any subsequent bonus shares must be ignored (*A.-G.* v. *Oldham*, 1940, 1K.B. 599).

The Board of Inland Revenue have now made a most important announcement of a change of practice, as follows:

Estate Duty is imposed by Section 2 (1) (c) of the Finance Act, 1894, incorporating Section 38 (2) (a) of the Customs and Inland Revenue Act, 1881, as amended by Section 11 (1) of the Customs and Inland Revenue Act, 1889, upon the "property taken" under a disposition purporting to operate as a gift *inter vivos*.

The Board of Inland Revenue are advised that the expression "property taken" must be read with Section 22 (1) (f) of the Finance Act, 1894, which defines "property," and the official practice will in future be governed by the following rules:

(*a*) where property given to a donee absolutely has been the subject of a sale for full consideration in cash between the date of the gift and the date of the donor's death duty will be claimed, not in respect of the property originally given, but in respect of the cash proceeds of sale; provided that, if the donee can show satisfactorily that at the donor's death the proceeds of sale are represented by property or investments, duty will be claimed in respect of such property or investments to the exclusion of any other property;

(*b*) where, before the donor's death, the property originally given to a donee absolutely has been transferred for full consideration received by the donee in the form of property other than cash duty will be claimed in respect of the property taken in exchange by the donee except that, if the property taken in exchange is sold by the donee before the donor's death, duty will be claimed in accordance with paragraph (*a*) above.

This will not affect (1) above, nor is it thought it can affect (5).

Illustrations of the change are as follows:

	Valuation for duty	
	Old basis	New basis
(1) Gift of shares within 5 years of death, valued at date of gift at £10,000, sold by donee for £12,000, valued at death at £15,000. The donee invested the £12,000 in shares valued at the donor's death at £14,000	£15,000	*£12,000 or £14,000
(2) Gift of house valued at date of gift at £5,000, sold for £8,000, worth £9,000 at donor's death. The proceeds not reinvested	£9,000	£8,000
(3) Same as (2) but proceeds invested in another house, valued at £7,000 at donor's death ..	£9,000	£7,000
(4) Same as (3) but new house, valued at £10,000	£9,000	†£8,000 or £10,000
(5) Shares in a company controlled by the donor sold by the donee before donor's death	At value on net assets basis under S. 55 F.A. 1940	†At proceeds of sale or investments representing reinvestment

* There is a doubt in the writer's mind here, as the new "rule" indicates that £12,000 would be the valuation unless the donee showed satisfactorily that the £14,000 of shares represented the proceeds of sale. The rule as stated rather indicates that £12,000 is the normal value, and that the alternative has to be claimed as a relief.

† See doubts in note to (1).

Mills, Factories and other Similar Premises

It is sometimes overlooked that where a trader was entitled to the mills, factories allowance in 1945-46, he is entitled to it for each of the following 10 years, up to and including 1955-56, unless an election is made to have the industrial buildings allowance instead. The allowance is the repairs allowance for Schedule A, limited to one-fifth of the net rating value except in London and Scotland, where the allowance is one-sixth of the gross rating value; if the premises are not assessed under Schedule A or consist of electricity works or brick works, the allowance is one per cent. of the cost to the trader of the building in question. The allowance is given to an owner-occupier; a tenant cannot claim it unless the whole burden of any depreciation of the premises will fall on him.

There are now few premises in respect of which the allowance is still claimed; if the premises are less than 50 years old, it is usually better to have the industrial buildings allowance, which could be claimed at any time in the ten years in question, in lieu of the mills, factories allowance. Where the 50 years had expired, however, the mills, factories allowance has been welcome.

Where an election is made to have the industrial buildings allowance, it must be remembered that the carrying into force of the Act (the " appointed day ") is determined by the year of assessment in which notice is given; if no notice is given, the appointed day for the building in question will be April 6, 1956, and any capital expenditure between April 5, 1944 and April 6, 1952, or between April 14, 1953 and April 6, 1956, will rank for initial allowances as if made on April 6, 1956.

Snippets

From Parliamentary Answers:

" Expenditure in connection with a claim under the Town and Country Planning Act, 1947, for compensation for the loss of development value of land held as a fixed asset is not admissible as a deduction in computing profits or as an expense of management for taxation purposes."

" By the end of next March taxpayers liable to E.P.T. will have had more than seven years from the end of 1946, when E.P.T. ceased to be charged, to carry out any repairs which were deferred during the E.P.T. period. It is most important to settle all E.P.T. liabilities as soon as possible, and any extension of the deferred repairs time limit would involve further delay in clearing up the tax. In these circumstances I regret that I cannot entertain the suggestion that the time limit for carrying out such repairs should be extended beyond March 31 next."

From Judgments:

" The method of keeping accounts is often a guide, but is never conclusive in income tax issues " (*Gold Coast Selective Trust* v. *Humphrey*, 30 T.C., at p. 228).

" There is no qualification or limitation of the words annual payment expressed in the rules applicable to Case III, but a limitation must be implied so as to exclude certain kinds of annual payments. The Act must be read as a whole, and construed so as to produce, so far as possible, a coherent scheme; and it is settled that Case III does not apply to payments which are in reality trading receipts in the hands of the recipients, although such payments take the form of annual payments. One reason is that income tax is a tax on income, and trading receipts are not income; a trader's income from his trade can only be determined after he has deducted his expenditure from his receipts and it cannot be supposed that sums which are not income are to be taxable under Case III " (Lord Reid in *C.I.R.* v. *Corporation of London* [*as Conservators of Epping Forest*], 1953, T.R. 123 at p. 132.)

Double Taxation—Greece

The Double Taxation Convention with Greece, which was signed on June 25, has been published as a Schedule to a draft Order in Council.

The convention, which is subject to ratification, provides for avoidance of double taxation on income and profits and is expressed to take effect in the United Kingdom from April 6, 1952. It is in general similar to those already made with France and other European countries.

Building Society Interest

We regret a drafting error in the note on page 259 of our August issue. In the first illustration, the figures showing tax payable should read:

		£3 3 0
£100 at 2s. 6d. ..	£12 10 0	
£150 at 5s. ..	£37 10 0	
£150 at 7s. ..	£52 10 0	
£19 at 9s. ..	£8 11 0	
		£111 1 0
		£114 4 0

Lectures on Taxation

Two courses of taxation lectures are to be given at Kingsway Hall, Kingsway, London, W.C.2. On Wednesdays at 6.15 p.m. the lecturer will be Mr. Percy R. Hughes, A.S.A.A., F.C.I.S., assistant editor of *Taxation*, whose subjects include back duty, Excess Profits Levy, companies and sur-tax, Schedule D: companies, and profits tax. On Thursdays at 6.15 Mr. F. E. Hargreaves, F.C.A., Mr. J. M. Cooper, A.A.C.C.A., and Mr. D. B. Owles, LL.B., A.C.I.S., will lecture on Schedule E, Schedule A, Schedule D: Cases I and II, profits tax, and capital and annual allowances. Each course consists of seven lectures, starting September 16 and 17 respectively, and the fee for each course is £1 1s. They are intended to help students by presenting the practical aspect of the subject, and to give an opportunity for practitioners to revise their knowledge and bring it up to date. Applications should be sent to Mr. Ernest T. Green, F.C.C.S., at Kingsway Hall.

Special Commissioners

The Lords Commissioners of H.M. Treasury have appointed Mr. Frederick Gilbert and Mr. Richard William Quayle, O.B.E., to be Special Commissioners of Income Tax.

Reader's Query

Management Expenses

Reader's Query.—In the Student's Tax Columns in the July issue (pages 230-1), I am surprised to read that management expenses of an investment-holding company not relieved in any year cannot be carried forward and shall be obliged if you will confirm this, and, if the statement is correct, give the authority for it.

Reply.—The limitation of relief by Section 425(2) only applies where a company is capable of being assessed under Case I; it does not, therefore, apply to an investment-holding company (Simpson *v.* Grange Trust, 19 T.C. 231). *Since there is no limitation there is no carry-forward.*

A Professional Note on page 283 deals with Taxation of Interest on P.O. Savings Accounts.

Recent Tax Cases

By W. B. COWCHER, O.B.E., B.LITT.

INCOME TAX

Income Tax—Balancing charge—Coal merchanting company owning railway wagons—Vesting of wagons in British Transport Commission—Whether a sale—Non-rateable machinery—Finance Act, 1936, Section 22—Finance Act, 1940, Section 30—Income Tax Act, 1945, Sections 17, 68—Transport Act, 1947, Sections 5, 8, 29, 30, 31 and 32—Defence (General) Regulations, 1939, Regulation 53.

John Hudson & Co., Ltd. *v.* Kirkness, (Ch., April 29, 1953, T.R. 159), was another case where the taxpayer disputed a balancing charge under Section 17 of the Income Tax Act, 1945, arising out of the nationalisation of transport. The appellant company was a coal merchant and in the year 1947 owned 633 railway wagons in connection with its business. These had been under requisition to the Ministry of Transport from some date in 1939 and by virtue of Section 29 of the Transport Act, 1947, became vested in the Transport Commission. By Section 30 (1) of the Act, compensation was payable on a certain scale in accordance with the principle therein laid down and detailed in the Sixth Schedule. On the hypothesis that the compensation received by the company was within the scope of Section 17 of the Income Tax Act, 1945, an assessment had been made for 1948-49 in the sum of £29,021; and, on appeal to the Special Commissioners, this had been confirmed.

The company appealed on two grounds. The second of these was the same as that in the *North Central Wagon Co. v. Fifield*, noted in our issue of July last (page 225), and was not arguable in face of the decision in that case. The first ground was that in the circumstances of the case, to be within the mischief of Section 17 of the Income Tax Act, 1945, there had to be a "sale" and the vesting of the wagons in the Ministry did not amount to a "sale." Upjohn, J., reversing the decision of the Special Commissioners, upheld this contention, applying common law principles:

> A sale is really a shorthand way of referring to a bargain and sale, and at common law there cannot be a sale without a bargain. It follows that mutual assent is necessary. Therefore, at common law, it seems to me quite plain that what happened here cannot possibly be described as a "sale."

He rejected the suggestion by the Crown that Sections 34 and 35 of the Finance Act, 1948, showed that Parliament thought that the provisions in the Transport Act, 1947, made Section 17 of the Income Tax Act, 1945, applicable and that he should take this into account. He was re-stating a well-known principle when he said:

> The fact that Parliament may have proceeded upon an erroneous assumption as to the effect of a taxing Act is no ground for construing that Act in a manner adverse to the taxpayer.

One of the two cases cited to him for the Crown was the requisitioned rum case, *C.I.R.* v. *Newcastle Breweries, Ltd.*, (1927, 6 A.T.C. 429; 12 T.C. 927), and, although the judge failed to find any principle there laid down applicable by him, it seems to the present writer that, but for one fact, if the requisitioning of rum is deemed to be equivalent to a sale it is hard to see why this should not be also the case with the requisitioning of wagons. Whilst, however, Newcastle Breweries Ltd. were trading in rum, the appellants in the present case were not trading in railway wagons, a difference which would seem to be very important.

Income tax—Author—Contract under which (1) to render exclusive services for three years to film company as writer of stories, etc. for films; (2) film company to have option to acquire at stated prices motion picture, etc. rights in novels published by author after date of contract and prior to expiration of contract period—Cancellation of contract by agreement under which sum paid to author and new option similar to (2) above given for nominal consideration—Whether sum paid receipt from profession as author or for termination of a contract of employment.

Household *v.* Grimshaw (Ch. April 21, 1953, T.R. 147), arose out of a contract with unusual features. Appellant was an author of short stories and two novels who, on December 31, 1943, whilst serving in the Middle East, entered into an agreement through his agent with Metro-Goldwyn-Mayer British Studios Ltd.—called "Metro" for short. Under its main provisions the appellant agreed to render to Metro:

> his exclusive services in . . . Europe only in accordance with Metro's directions and instructions and either alone or in conjunction or collaboration with any other person appointed by Metro in writing and composing stories, treatments, adaptations, continuities, scenerios

and Metro agreed to pay the appellant £10 per week as from July 20, 1943, until the commencement of his employment. This weekly sum was not repayable unless appellant broke the agreement but was to be taken into account if Metro exercised certain options. The term of the contract was to be a minimum period of 12 consecutive weeks in each of the three consecutive years commencing as soon as appellant could obtain his discharge from the Army or, at latest, three months thereafter. Metro might extend the 12 weeks to 16 weeks in any year. By Clause 4 of the agreement:

> All products of the writer's services to Metro . . . shall be the sole property of Metro who shall be deemed in law to be the sole author thereof (the writer acting entirely as Metro's employee) . . .

whilst by Clause 6:

> Metro shall have the right to add to take from change adapt translate into and use and treat in every way and in all or any languages the products of the writer's services . . . but shall not be bound to make any use of the products of the writer's services.

By Clause 8, the appellant was to devote the whole of his time and attention to rendering services to Metro but might work at home provided he attended Metro for conferences and discussions as and when required during normal business hours. During the three years he was not to do similar work for films or:

> render any other services for films to or for himself or any person (except Metro) in any part of the world without the previous consent in writing of Metro.

Appellant was to be paid for his entire services £200 per week.

By a separate provision in the agreement, appellant gave Metro the option to acquire the motion picture, television, broadcasting and ancillary rights in each novel written by the writer and published after the date of the agreement and prior to the expiration of three years. Metro was given the option of extending the whole agreement (including the option) for a further period of two years upon the same terms.

In 1945, appellant worked for Metro for the minimum period of twelve weeks; but, in 1946, Metro said they had no work for appellant and sought release from their bargain. Finally, appellant, realising that Metro "could make his life miserable," agreed to cancellation on terms whereby he received £3,000 (of which his agent was paid £300) and gave Metro for a nominal consideration a new option over his novels, similar in terms to the original one.

The Crown claimed, *inter alia*, that the contract was not a contract of employment

and that the £200 per week and the option were one entire consideration which could not be split or apportioned and that this showed that it could not be an employment under Schedule E. For the appellant, upon the other hand, it was contended that the £200 per week was for each year's services whilst the £10 per week and the option provisions were distinct. The Special Commissioners had held that the agreement was a mere engagement in the course of the appellant's profession of author and that, compared with *Davies* v. *Braithwaite* (1931, 10 A.T.C. 286; 18 T.C. 198), the appellant's case was weaker because each of Miss Braithwaite's " posts " was full time whilst it lasted. This example, Upjohn, J., considered to be not a happy one because in some respects the appellant's case was much stronger, for during the period of twelve weeks:

> he was bound hand and foot as a mere servant or tool of Metro, and had to carry out every literary duty laid upon him as Metro pleased.

Nevertheless, " upon the whole " but without giving any reasons, he held that the Special Commissioners had come to a correct decision on this point, and having held that the £2,700 was not within Schedule E—had it been the decision in *Henly* v. *Murray* (1950, 29 A.T.C. 35; 31 T.C. 351) would have exempted it from tax—the question remained whether it was a Revenue item within the ambit of Case II of Schedule D. As to this, the cancellation agreement provisions regarding the new option were obviously planned to avoid there being " one entire consideration "; and although the Special Commissioners found that the attempt at separation had failed, Upjohn, J., held that their conclusion to this effect was " a complete *non sequitur*," and that they had misdirected themselves. On a careful review of the decided cases, he found that the £2,700 was not a capital receipt and, so, upheld the Special Commissioners' decision.

Upon the subject of whether where one entire consideration under a contract comprises what is taxable and what is not the consideration can be legally split, *Wales* v. *Tilley* (1943, A.C. 386; 25 T.C. 136) left the question undeterminate—the Crown giving way in that case—but the judgment of McKinnon, L.J., and the conclusion of Lord Porter's speech, were definitely in favour of splitting. As regards the present case generally, the complete surrender of professional independence stressed by the judge, whilst compatible with an employment assessable under Schedule E, would seem to be hard to reconcile with the idea of a " profession." It might be otherwise if a man writing for a living was held to be only carrying on a " vocation," " a very large word indeed " (*Partridge* v. *Mallandaine*, 1886, 2 T.C. 180) the limits of which have never been defined, although it may be said, on a generalisation, that " professions " are only " vocations " which have risen in the social scale and become subject to codes of behaviour.

Income Tax—Settlement—Discretionary powers of trustees as to distribution of income and capital for benefit of " specified class "—Specified class inclusive of certain charities but wide and fluctuating—Impossible for trustees to know limits of area of selection—Income and capital not distributed to be held in trust for children and remoter issue of settlor—Charity—Repayment claim—Whether whole trust void for uncertainty—Income Tax Act, 1918, Section 37 (1) (b). (Income Tax Act, 1952, Section 447 (1) (b).

In Re Gestetner's Settlement (Ch. April 15, 1953, T.R. 113), arose out of a settlement made on April 4, 1951, whereby the settlor conveyed the sum of £100,000 to trustees primarily for the benefit of persons connected with his family business but including a number of the settlor's relations by birth or marriage and a number of charitable institutions, the whole list being comprised in one " specified class ". The settlor and his wife and the trustees of the settlement were excluded from benefit. Subject to certain provisions, the trustees were given absolute discretion as to the application of the trust fund and the income thereof between the members of the " specified class ", and were also given powers of accummulation. Subject to the exercise of their discretionary powers, the trustees were to hold the income and capital of the trust fund for the children and remoter issue of the settlor. In the exercise of their discretion, the trustees had paid some of the income to a charity which had then claimed repayment of the tax deducted therefrom. This was refused by the Revenue upon the ground that the whole trust was void for uncertainty.

It was admitted that the " specified class " was not one ascertainable at any given time, being a fluctuating body, and for the Revenue it was contended that the trustees' power was one coupled with a duty, that is, before they could distribute they had to know the limits of the area of selection; and although they would know whether any particular person was within the power, they could not tell how many others might be within it. As a result, they could not perform their " duty of considering the rights and wrongs and the merits and demerits of the objects " of the power. Harman, J., however, said that if the power did not impart a trust upon the conscience of the donee of the power he did not think it could be the law that it was necessary to know of all the objects in order to appoint to one of them and that, if, however, it were so, many appointments made every day would be bad. He instanced ordinary family settlements in which the fact that a father did not know whether one of his sons had married and had children or not, could not possibly make the exercise of a power in favour of his unknown grandchildren bad. Upon the other hand, if it was the trustee's duty to distribute a fund among a certain number of people, his task being one of selection, there was, he thought, much to be said for the view that he must be able to review the whole field in order to exercise his judgment properly.

Towards the close of his judgment, he said:

> If, therefore, there is no duty to distribute but only a duty to consider, it does not seem to me that there is any authority binding on me to say that this whole trust is a bad one or this whole power is a bad one. In fact, there is no difficulty, as has been pointed out and admitted, in ascertaining whether any given postulate is a member of the specified class. . . . There being no uncertainty in that sense, I am reluctant to introduce a notion of uncertainty in the other sense by saying that the trustees must worry their heads about people in China or Peru, when they have got perfectly good objects of the class before them in England.

He, therefore, held that " in a trust worded in this way " uncertainty as to how many objects there were beyond these last did not invalidate the trust. Had he held otherwise there would have been a resulting trust to the settlor of the whole fund.

Income Tax—Trade—Deduction in computing profits—Expenses of advertising campaign against nationalisation of an industry—Income Tax Act, 1918, Schedule D, Cases I and II, Rule 3 (a)—Land and Income Tax Act (New Zealand) 1916, Section 86 (1) (a).

Morgan v. Tate and Lyle, Ltd., (C.A., May 6, 1953, T.R. 175), was the subject of a note and a special article in our issue of March last (page 90 and pages 87-9); and the facts of " the case of 'Mr. Cube' " are common knowledge. The legal question was whether the sum of £15,339 spent in the Company's year to October 1, 1949,—the total cost is not stated—in an anti-nationalisation campaign was admissable as a deduction in computing the profits of the year for income tax under Rule 3 (a) of Cases I and II of Schedule D. The City of London Commissioners and Harman, J., had decided in favour of the company and by a majority, Singleton, L.J., dissenting, the latter's judgment was

affirmed. Leave to appeal to the House of Lords was given. Jenkins, L.J., gave a long and careful analysis of leading cases bearing on the interpretation of Rule 3 (a) whilst Hodson, L.J., contented himself with a short judgment which he concluded by saying that "expenditure laid out in protecting himself against nationalisation is directed towards enabling him to retain the trade which he is carrying on." Singleton, L.J., in his dissenting judgment, drew attention to the political aspects of the case.

In the judgments of Jenkins and Hodson, L.J.J., it was pointed out that, as before the Special Commissioners the Revenue had not taken the point that although the expenditure in question might come within Rule 3 (a) it was nevertheless inadmissable as being of a capital nature, it could not raise this point in the Courts. Counsel had apparently attempted to get over this by contending not that it was capital but that it was not revenue expenditure. The evidence given by the member of the firm of accountants who were auditors to the company had apparently been to the effect that the expenditure was in accordance with ordinary commercial accountancy practice chargeable against profits as no capital asset had been produced. This evidence had been accepted by the Commissioners, and Jenkins, L.J., said "I think that it is really concluded against him," the inspector, by that evidence. The auditor's reason as stated in the case, would seem to make his opinion of less legal value than it would have been if the reason had been omitted. It would apply to abortive but admittedly capital expenditure. It remains to be seen what view the House of Lords will take of the case.

Income tax—Isolated transaction—Purchase and sale of cotton-spinning plant—Profit intention—Whether an adventure in the nature of trade.

Edwards *v.* Bairstow and Harrison (Ch., April 28, 1953, T.R. 155), was a case where the respondents purchased certain cotton-spinning plant in 1946 with the intention of selling it at a profit as quickly as possible. They had hoped to sell it in one lot but had, ultimately, to dispose of it in five separate transactions spread between 1946 and February, 1948. There was a profit of £18,000 and, on appeal, the General Commissioners decided "this was an isolated case and not taxable," an obvious *non sequitur*.

The Crown submitted that Upjohn, J., should follow the Court of Session and, regarding the question as one of mixed fact and law, decide the case on the facts set out in the lease. Upjohn, J., held that he was not at liberty to follow the practice of the Scottish Courts and remitted the case, the Commissioners to hear reasoned argument on the law but not fresh evidence.

Income tax—Appeal—Production of Accounts—Rejection of Accounts by General Commissioners—Increase of assessment on appeal—Estimated figure—General Commissioners' power to increase assessments on appeal Income Tax Act, 1918, Sections 125, 137. (Income Tax Act, 1952, Sections 41, 52).

Cain *v.* Scholefield (Ch. May 4, 1953, T.R. 201), afforded one more illustration of the powers of General (and Special) Commissioners where the evidence upon behalf of the taxpayer given on an appeal is deemed unsatisfactory. From the report of the case, it seems that for the year 1950-1 the appellant, a bookmaker, was assessed in the sum of "£500 or thereabouts." He appealed; and, shortly before the end of August, 1951, when the case came before the General Commissioners, the appellant, through his accountants, had furnished accounts and a reconciliation statement showing an "income of £667 16s. 8d." Incidentally, as the Commissioners had pointed out in this case, he had only shown £1 10s. per week for personal use and the usual, alleged, betting profits—apparently only a balancing figure—were stated to be £842. Disbelieving that the appellant had given his accountants a true record, the Commissioners increased the assessment from £500 to £2,000. It was apparently contended before the Judge that:

> the proper course was to have confirmed the original assessment of £500 and to leave the additional Commissioners to raise an additional assessment under Section 125 of the Income Tax Act, 1918.

an obviously impossible argument on the facts of the case. In his judgment, dismissing the appeal, Upjohn, J., drew attention to other facts of the case which the Commissioners had taken into account in fixing the assessment of £2,000.

The case would have been more useful had there been no other facts beyond accounts shown to be worthless with the result that whatever the figure of profits determined on the appeal it would have been of necessity little more than a *bona fide* but blind estimate by the Appeal Commissioners. Unfortunately, the number of such cases is legion.

Income tax—Builder from 1934 to 1939—Houses in hand in March, 1939, sold after an interval of years—other houses purchased between 1944 and 1948 and sold subsequently—Whether a trade of property-dealer carried on subsequent to March, 1939.

Foulds *v.* Clayton (Ch. May 5, 1953, T.R. 203), was the case of a farmer who had commenced trade as a builder in 1934 and had so traded until March, 1939. At the latter date he had on hand 31 houses built by him but unsold. He had also another house purchased in 1937 and retained by him. These properties were mortgaged. He had sold 19 of these houses between 1943 and 1949. In 1944 he had purchased two houses which he still retained, and between 1944 and 1948 he had purchased 32 houses in one block, four separate houses and five separate pieces of land. He had sold the 32 houses, two of the separate houses and two of the pieces of land. He had been assessed under Case I of Schedule D for the income tax years 1944-5 to 1950-1, and on appeal the Commissioners had found that the appellant had carried on the trade of a property-dealer "from 1934 to the present time." Although it was contended that the properties in question were investments and that where realised there was in every case a good and special reason for the sale, Upjohn, J., upheld the Commissioners' decision as a finding of fact for which it could not be said there was no evidence.

Case I of Schedule D—Letting of town hall for meetings, dances and roller skating—Whether receipts apportionable between those arising from rights of property within Schedule A and those arising from carrying on activities—Income Tax Act, 1842, Sections 60, 100—Income Tax Act, 1853, Section 5—Income Tax Act, 1918, Schedule D, Cases I and II, Rule 5—Finance Act, 1940, Section 15.

Jennings *v.* Middlesbrough Corporation (Ch., May 20, 1953; T.R. 239) involved a point which has been in doubt since the decisions in a series of cases of which the last was *Croft* v. *Sywell Aerodrome, Ltd.* (1942, 20 A.T.C. 304; 24 T.C. 126). The position is sufficiently set out in the heading. The Special Commissioners had found as a fact that the Corporation was carrying on during the relevant years 1938-39 to 1946-7 inclusive a concern in the nature of trade assessable under Case I of Schedule D. This was not disputed. They, however, had held that, in view of the remarks of Lord Greene, M.R., in the *Aerodrome* case, the receipts from the activities in question fell to be apportioned between those attributable to the exploitation of the Corporation's right of property in the town hall and those attributable to the provision of chattels and services in connection with those activities. Referring to the apportionment made in *Shop Investments, Ltd.* v. *Sweet* (1940, 19 A.T.C. 35; 23

T.C. 38), Lord Greene had said he thought that a similar apportionment could have been made in the *Rotunda* case (1921, 1 A.C. 1; 7 T.C. 517) and the *Carlisle Golf Club* case (1913, 3 K.B. 75; 6 T.C. 48) had the point been considered and if any benefit could thereby have accrued to the taxpayer. The facts in the *Rotunda* case were very similar. Upjohn, J., reversing the decision of the Special Commissioners, pointed out that Lord Greene's remarks were *obiter* and overlooked the vital fact that the *Shop Investments* case was under Case VI and not under Case I, and that by reason of the terms of Rule 5 to Cases I and II of Schedule D no apportionment was possible, the only deduction under Case I being that provided by the Rule.

The doubt which previously existed on the point was dealt with by Section 31 of F.A., 1948; but in the *Shop Investments* case the Crown had claimed under either Case I or Case VI and in either case was willing to allow deduction of the net Schedule A. Although Wrottesley, J., said:

> *Incidentally*, I may say that I see no ground in the facts of this case for saying that the appellants carry on the business of letting furnished cinemas. To some extent by accident they in fact let one furnished cinema

there was no suggestion in his judgment that the position under Case I was any way different from that under Case VI. In fact there was no mention of Cases.

EXCESS PROFITS TAX

Excess Profits Tax—Capital employed—Wartime control of an industry—Pooling of profits—Established interests of members in pool fund—Provisions for distribution of fund—Whether part of capital employed in trade or business—Whether accruing profits during each accounting period of fund—Finance (No. 2) Act, 1939, Sections 13 (3), 14 (2), Schedule VII, Part II, paragraphs 1, 2 and 4.

C.I.R. *v.* Walker Cain, Ltd. (Ch. April 24, 1953, T.R. 193), arose out of the assessment to excess profits tax of the respondent brewery company in respect of the profits of a subsidiary company and the wartime control of the soft drinks industry. During the war the company operated under licence but in 1943 it was compelled to enter into a Government scheme whereby there was formed a limited company called The Soft Drinks Industry (War Time) Association, Ltd. This company was recognised by the Minister of Food as the competent trade body governing the industry. Each operating company was to manufacture and sell for the benefit of the whole industry and was to receive a predetermined cost allowance. It had to account to the Association for the excess of its sales over the cost allowance and the net amounts so paid by the members was to form a pool fund. Each member was to have a share in this fund called his " quota profits " in proportion to his established interest in the industry as determined under the scheme. Every six months there was to be a share-out of the net amount in the pool fund amongst the members in accordance with the proportions of their respective quota profits to the aggregate quota profits. The committee of the Association might make at their discretion interim distributions from the pool fund.

During the accounting period from July 1, 1946, until June 30, 1947, there were three pool periods, the last month of the period ending July 31, 1946, the whole of the period to Jan. 31, 1947, and the first five months of the period to July 31, 1947. Substantial payments had been made before, or on, or shortly after the end of each pool period and residual sums remained to be distributed when the accounts of the Association were finally cleared. The Special Commissioners had decided that the sums to the credit of the subsidiary company from time to time were part of the capital of the company for Excess Profits Tax; and Upjohn, J., upheld their decision. He said that the pool fund was not part of the general assets of the Association but was a trust fund in which each member was entitled to his aliquot share. Under the scheme, the fund had to be distributed amongst the members as soon as possible and the company was making profits which were to be found not in its own coffers but in a trust fund. Apart from authority, under the provisions relative to computation of capital employed he would have thought the matter beyond argument, and he found nothing in the cases relied on by the Crown to affect his conclusion. He also found in favour of the alternative argument that the pool fund represented accruing profits during the six-monthly periods and had to be taken into account in computing capital employed by virtue of paragraph 4 of Part II of the Seventh Schedule to the 1939 Act.

The decision in *C.I.R.* v. *Terence Byron, Ltd.* (1945, 1 All E.R. 636; 24 A.T.C. 66), divorced the conception of " capital employed " from any necessary relation to economic reality. Apart from this, it may be suggested that the accumulating profits of a continuing business do normally function as working capital and that the making up of the accounts to any date does not of itself change the economic character of the profits which have been accruing during the accounting period then ended. The trust fund in the case under review, until distribution, might be a foundation of credit but, factually, could scarcely function as capital employed by the members of the pool.

STAMP DUTY

Conveyance on sale—Exemption for charities—Trust for promotion of religious social and physical well-being—Trust for moral social and physical well-being—Whether trusts within exemption—43 Elizabeth I, ch. 4—Stamp Act, 1891, Section 54 (1), Schedule—Finance (1909-10) Act, 1910, Section 74—Finance Act, 1947, Sections 52 and 54 (1).

Baddeley (Newtown Trustees) *v.* C.I.R. (C.A., May 18, 1953; T.R. 219) was noted in our issue of March last at page 93. In the Court of Appeal the importance of the case was greatly increased. The issue arose out of two conveyances dated August 21, 1951, made by a Mr. Baddeley to the trustees of a trust to be called " the Newtown Trust." By the first deed, there was transferred a piece of land on which were already erected a mission church, lecture room and store, being the property from which the Stratford Newtown Methodist Mission was being conducted. The objects of the first trust were, briefly:

> the promotion of the *religious* social and physical well-being of persons resident in the county boroughs of West Ham and Leyton

whilst by the second deed there were transferred to the trustees four pieces of land at Ilford laid out as a playing field upon which there were a pavilion and a groundsman's bungalow, together with a sum of £10,000 as endowment. The objects of the second trust were briefly:

> the promotion of the *moral* social and physical well-being of persons resident in the county boroughs of West Ham and Leyton

but, in the case of both trusts, the beneficiaries were to be restricted to persons who in the opinion of the leaders for the time being of the Mission:

> are members or likely to become members of the Methodist Church and of insufficient means otherwise to enjoy the advantages provided.

For the exemption to apply the trusts had to fall within the classifications set out in Lord Macnaghten's speech in *Pemsel's* case (1891, A.C. 531; 3 T.C. 53), i.e. trusts for (1) the relief of poverty, (2) the advancement of education, (3) the advancement of religion and (4) other purposes beneficial to the community not falling under any of the preceding heads. The Revenue had refused exemption and Harman, J., had upheld their refusal. Examining the trusts, he had held that they were not for the relief

poverty within the meaning of the Act of Elizabeth, and it had not been argued that they were for the advancement of religion. It had, however, been claimed that they fell within the fourth category of charitable trusts, and, on this, he said that if he had been free to do so he would have held that recreation was not a charitable object, but, if it were, he would have held that the purpose of the trusts was public recreation. He had found himself obliged to follow *Londonderry Presbyterian Church House Trustees v. C.I.R.* (1946, 46 T.C. 431), a Northern Ireland case with very similar features, where a decision of MacDermott, J., in favour of the trustees had been reversed by the Court of Appeal, Northern Ireland. Although the latter Court was unanimous in its conclusion, there had been difference of opinion upon the important point whether the adherents of the Presbyterian faith in Londonderry were a section of the public sufficient for the purposes of the fourth category, Andrews, L.J., agreeing with MacDermott, J., that they were, whilst Babington, L.J., held otherwise.

The view of Harman, J., as to the non-charitable nature of recreation had the strange result that in the Court of Appeal, although the Commissioners of Inland Revenue were represented by two counsel, the Attorney-General and a junior also appeared as *amicus curiæ* or "disinterested adviser"—to give the usual definition of his function. The cause of his intervention was anxiety lest the expressions of Harman, J., should be regarded as casting doubt upon the title to exemption of charitable trusts like the National Playing Fields Association; and, in his judgment, Evershed, M.R., said that Harman, J.'s opinion on recreation was too broadly stated. The Court was unanimous in reversing his decision on the case, Jenkins, L.J., giving the leading judgment, a very long and careful analysis. He summarised his views upon the first trust as follows:

> A succinct and, I think, not unwarranted paraphrase of the object of the trust is to describe it as the promotion of the performance by persons resident in the two boroughs of their duty towards God, their duty towards their neighbours, and their duty towards their own bodies as instruments upon the healthy condition of which the proper performance of the two duties in great measure depends,

whilst, in the case of the second trust, "moral" took the place of "religious," because, as he said, playing fields were:

> hardly suitable for formal religious instruction or observances.

As regards the element of public benefit, the Court was unanimous that the prospective beneficiaries did constitute a sufficient section of the public for the purposes of a charitable trust.

Upon behalf of the Crown, an argument was put forward which Jenkins, L.J., said was new to him but Evershed, M.R., characterised as

> a heresy without warrant in authority

which would turn the preamble to the Statute of Elizabeth into an exhaustive definition of charities by way of a list of mutually exclusive activities, the "spirit and intendment" of the preamble being greatly narrowed. If a trust could not be brought strictly within any one of the first three heads of poverty, education and religion it could only be brought within the fourth head and the object must be analogous to those mentioned in the Statute of Elizabeth I, namely, trusts for:

> the repair of bridges, ports, havens, causeways . . . sea-banks and highways.

So, to qualify for exemption, there had to be an addition to the common stock of the community, and the public or section of the public to be benefited must be the public at large without any restriction otherwise than by residence in some specified area. Trusts restricted to such residents in an area as were members of some particular religious sect or denomination did not, therefore, constitute a sufficient section of the public.

The case is apparently to be taken to the Lords; but, although the Revenue's "new look" would seem to have come somewhat late in the day, many will have difficulty in seeing why trusts of such a character as those in question should be exempted from sharing the general burden of taxation.

Tax Cases—Advance Notes

By H. MAJOR ALLEN

HOUSE OF LORDS

Dale *v.* C.I.R. July 20, 1953.

The facts in this case and the decision of the Court of Appeal were reported in ACCOUNTANCY for October 1952, at page 345.

The House of Lords unanimously reversed the decision of the Court of Appeal and held that the annuity received by Sir Henry Dale as executor and trustee under the will of the late Sir Henry Wellcome was earned income arising from an office of profit.

Fenwick *v.* C.I.R. July 20, 1953.

The facts in this case and the decision of the Court of Appeal were reported in ACCOUNTANCY for December 1952 at page 407.

The House of Lords unanimously affirmed the decision of the Court of Appeal.

CHANCERY DIVISION (Vaisey, J.)

Goff *v.* Osbourne & Co. (Sheffield), Ltd. July 9, 1953.

Facts.—The company carried on business up to July 1939 in premises which were at that date taken over under a compulsory slum clearance order. The company then collected outstanding book debts and prepared a balance sheet which showed no assets except the formal entry for formation expenses, and informed the Inspector of Taxes that it was to be wound up. No winding up in fact took place, but the registered office of the company was moved to the accountants' office, where its books were destroyed in an air raid in 1940. In 1941 the company made some attempt to resume business, but was unable to obtain the necessary licence to do so. Subsequently the shares were sold by the shareholders to a Mr. Sibbell, who in 1944 acquired a business to the offices of which the registered office of the company was transferred. The company claimed relief for losses sustained prior to 1939, contending that the business carried on from 1944 onwards was a continuation of the business which had existed up to 1939 and there had been no permanent discontinuance within the meaning of the Income Tax Acts.

Decision.—Vaisey, J., reversing the decision of the Commissioners, allowed the appeal of the Crown and held that there was no continuity between the business now

carried on and the previous business; the claim under Section 33, Finance Act, 1926, accordingly failed.

Strick *v.* Longsden. July 15, 1953.

Facts.—On December 13, 1947, L executed a lease of a farm in Norfolk which reserved a rent of £675 per annum payable by half-yearly payments on April 6 and October 11, the first payment to be made on April 6, 1948. L was assessed in respect of the year 1947-48 under Case VI of Schedule D and Section 15 of the Finance Act, 1940, upon the footing that as respects the year 1947-48 he was the "immediate lessor" of the farm, entitled to rent payable under the lease. He appealed upon the ground that he was not entitled to any rent in respect of the year 1947-48. The Commissioners allowed the appeal.

Decision.—Vaisey, J., reversed the decision of the Commissioners, holding that although L was not "entitled" to receive any rent payable in the year 1947-48, he was "entitled" to the rent "as respects" (that is, in regard to) the year of assessment.

Haldin & Phillips (In Liquidation) *v.* C.I.R. July 17, 1953.

Facts.—The company carried on the trade of ship manager to a shipowning company, which early in 1947 sold its ships and went into voluntary liquidation. Thereupon the appellant went into voluntary liquidation on July 15, 1947. The company had in the past made up its accounts annually and at the date of the passing of the winding-up resolution the last year for which accounts had been made up was the calendar year 1945. Prior to the passing of the resolution, the auditors had been instructed to prepare accounts for 1946 and for the three months ended March 31, 1947. Those accounts were, however, not certified by the auditors until August 1, 1947, and November 1, 1948, respectively, and were approved at an extraordinary general meeting of the company on April 30, 1952. On December 18, 1951, the Special Commissioners, purporting to act under the provisions of Section 31 of the Finance Act, 1927, issued a sur-tax direction in respect of the period beginning on January 1, 1946, and ending on July 15, 1947. The company appealed upon the following grounds:

(*a*) that the accounts for the calendar year 1946 and the three months ended March 31, 1947, having been made up prior to the making of the direction, the Commissioners' powers under Section 31 (4), Finance Act, 1927, were limited to the period from April 1, 1947 to July 15, 1947; or alternatively,

(*b*) that if accounts for those periods had not been "made up," the provisions of Section 31 *supra* did not, when read in conjunction with Section 21, Finance Act, 1922, enable the Commissioners to make a direction for a period for which accounts had not been made up.

Decision.—Vaisey, J., dismissed the appeal, holding that (*a*) the date at which the question had to be asked "What is the last date to which accounts have been made?" was the date of passing of the winding-up resolution; and (*b*) that the provisions of Section 31 (4), read in conjunction with Section 21 of the Finance Act, 1922, did enable the Commissioners to make a direction for a period for which accounts had not been made up.

Griffiths *v.* Mockler. July 21, 1953.
Lomax *v.* Newton. July 21, 1953.

Facts.—L, a Territorial Army officer, claimed, under Rule 9 of Schedule E, Income Tax Act, 1918, to deduct the following items of expenditure: (*a*) annual mess subscription; (*b*) share of mess guests' expenditure; (*c*) payments to batmen at weekend and annual camps; (*d*) hire of camp furniture; (*e*) payments for hotel accommodation at exercises, etc., in excess of detention and ration allowances.

M, a Regular Army officer, claimed a similar allowance in respect of the amount of his annual mess subscription.

Decision.—Vaisey, J., held that L was entitled to the deduction under head (*e*) above but not to items (*a*) (*b*) (*c*) and (*d*), and that M was not entitled to any deduction in respect of his annual mess subscription.

Sharkey *v.* Wernher. July 24, 1953.

Facts.—Lady Wernher carries on two activities:

(i) a stud farm, the profits of which are assessable under Case I of Schedule D, by virtue of Section 10, Finance Act, 1941, and Section 31 (1) (*a*), Finance Act, 1948;

(ii) the racing and training of horses for recreational purposes—an activity not giving rise to any liability to tax.

Horses are bred at the stud farms for the racing stables, to which from time to time they are transferred. In the relevant year five horses were transferred from the stud farm to the racing stables, and the stud farm accounts were credited with the cost of breeding the transferred horses. The Crown raised an assessment upon the footing that there should be credited to the stud farm accounts the market value of the horses (which considerably exceeded the cost of breeding).

Decision.—Vaisey, J., upheld the Crown's contention, following and applying the decision of McNaughton, J., in *Watson Bros.* v. *Hornby* (24 T.C. 506).

Earl Beatty *v.* C.I.R. July 24, 1953.

Facts.—Earl Beatty appealed against assessments made under Case VI of Schedule D for the years 1939/40–1943/44 under the provisions of Section 18, Finance Act, 1936. The correctness of the amounts assessed was not in question, but the appellant contended that the assessments were additional assessments made under Section 125 of the Income Tax Act, 1918, and were bad in that the Inspector had not made a "discovery." It was said on behalf of the appellant that the assessments were made because the Commissioners suspected that certain transfers of assets had been made, which in fact were not made, and were only subsequently justified upon the ground that there had been other transfers of which the Commissioners had throughout been aware.

Decision.—Vaisey, J., dismissed the appeal upon the ground that there had been a "discovery," even though the Commissioners did not at the time appreciate the true bearing of what they had discovered.

Patrick *v.* Broadstone Mills, Ltd. July 24, 1953.

Facts.—The company carried on the business of cotton spinners. At all stages of the processing carried on there was a quantity of cotton, either on the machine or waiting at the side of the machine, ready to take the place of the cotton actually on the machine. (The former is referred to as "fixed process stock" and the latter as "spare process stock.") In preparing its accounts the company valued the spare process stock at an arbitrary figure, which was lower than market price. The fixed process stock did not figure in the profit and loss account but was included in the balance sheet item "land, buildings and fixed stock" at a figure representing the cost of the fixed process stock on the purchase of the mills by the company in 1920.

The Revenue raised assessment upon the company on the footing that the whole of the process stock should be included at the lower of cost or market price. Upon appeal, the Special Commissioners allowed the company's appeal upon the ground that the base stock method adopted by the company was recognised and accepted in the cotton industry and was unobjectionable for commercial purposes.

Decision.—Vaisey, J., allowed the Crown's appeal upon the ground that the base stock method was not appropriate for the purpose of assessment to income tax, because it did not afford a true picture of the profits in any one year, and because for that purpose the process stock at the beginning and end of the year of charge should be valued and brought into account at cost or market price.

The Student's Tax Columns

CAPITAL OR INCOME?

INCOME TAX IS A TAX ON INCOME, AND CAPITAL GAINS ARE not taxable under the Income Tax Acts, nor is capital expenditure a deduction in computing profits.

What distinguishes income from capital? A useful start to the solution of that problem, as has been said earlier, is to regard the tree as capital and the fruit of the tree as income. That, however, is only a start, because of the man who produces trees for sale, or buys and sells trees as his trade. His profit becomes income as soon as his dealing becomes a venture in the nature of trade. Land is normally "tree," not "fruit," but a dealer in land has income from the profits on sale.

Laying down general rules as to the distinction between capital and income is an almost impossible task. The number of cases that have been heard in the Courts on the distinction is enough proof of that statement. Moreover, a payment may be of a capital nature on one side and of an income or revenue nature on the other, or vice versa, e.g. the company which makes a machine for sale has a revenue receipt, but the buyer who acquires it as a fixed asset makes a capital payment.

Income can also arise without a "tree" in tangible shape, e.g. personal earnings.

While the commercial distinction between capital and revenue is generally acceptable for income tax purposes, it is not always so. Nor is there any single infallible test for settling whether a receipt or payment is of an income or capital nature.

Expenditure incurred "once and for all" to produce future income is normally capital in nature; expenditure that recurs every year is normally revenue expenditure. Though an item may not in fact recur, but is capable of recurring, it has the imprint of revenue, not capital. Expenditure on getting rid of an onerous item of fixed capital is usually capital expenditure, but expenditure to get rid of an onerous agreement, e.g. with an employee who no longer "fits in," may be a revenue payment by the employer, though whether or not it is income of the employee depends on whether it is made under terms expressed or implied in the contract (which makes it income) or in compensation for the employer being released from his future liability under the contract (when it is a capital receipt).

Fortunately, difficulty in distinguishing what is revenue as distinct from capital arises only in comparatively rare instances, mainly in connection with isolated transactions.

If a person has had only one transaction, e.g. in land, his profit or loss on the deal is normally admitted to be a gain or loss of capital—growth or withering of the tree. But if it is a transaction in the line of the person's own trade—though not part of his ordinary business—it may be an adventure in the nature of trade.

The nature of the transaction in relation to the commodity dealt in is also relevant. The purchase may be with a view to resale at a profit, yet there may be other purposes.

A man who buys a valuable picture has æsthetic enjoyment of it while he holds it; a purchaser of stocks and shares enjoys the income; land also is a potential yielder of income while held. In each of those cases a single transaction can rarely be in the nature of trade.

If, however, the purchase is of something that can yield no income, is far in excess of what could be used by the buyer and his friends, yields no pride of possession, and can only be turned to account by realisation, and the dealings are of the kind that take place in ordinary trade (though not that of the person involved), there can be said to be an adventure in the nature of trade, as in the case where a man bought over £400 worth of whisky in bond and sold it during the war for over £1,100, and that where a moneylender bought and sold a million rolls of toilet paper!

In neither of the two instances mentioned could it be said that the purchase was an investment of money as capital funds; it had all the characteristics of trade.

In this connection, it is well to note that an appreciation of property cannot be assessed under Case VI; the purchase and sale can only be assessed if it is in the nature of trade, and that is a matter for Case I. Repetition of buying and selling makes the trading angle more apparent.

Repairs executed on an asset after its purchase to put it into usable order are capital expenditure; only repairs attributable to the period the asset is used in the trade are revenue.

When a man buys an annuity he turns his capital into income, in that, for a lump sum down, he is to receive annual (or more frequent) payments for the rest of his life. He can, however, arrange to receive his capital back by instalments, and then only the interest included in the payments will be income. It is always necessary to distinguish the two types. Some assurance offices will, for a lump sum, pay for a fixed number of years an amount which is a return of capital with interest, to be followed, if the insured person survives, by an annuity which is all income. The annual payment will be much less, of course, than with a straight annuity. The lump sum can be provided by premiums on an endowment policy over the years till the annuity is to start.

Sometimes, under a will, a beneficiary is left an annuity for life, to be paid out of the income from the estate or of a fund to be set aside for the purpose, with the provision that if in any year the income is insufficient the difference is to be made good out of capital. In that event, the amount paid out of capital becomes income of the beneficiary and the estate will be assessed under Section 170 on the amount so paid.

The Month in the City

After the Truce

THE EFFECTS OF THE END OF THE FIGHTING IN Korea had been discussed—and discounted—for so long in the City that when the truce was signed it caused only the slightest of flutters in the commodity markets and was virtually ignored in Throgmorton Street. After a quick glance over their shoulders at the Wall Street market, investors were content to base their decisions upon economic and monetary conditions at home. And judging by the unseasonable strength in the gilt-edged and industrial markets after the bank holiday their interpretation of these factors was a favourable one.

Paying very little attention to the uncertainties of international economics and politics, investors found some grounds for confidence in the course of events at home. Amongst these factors could be numbered the unexpectedly satisfactory increase in the gold and dollar reserves in July, the rise in production and the slight growth of bank advances to industry. Behind all these factors, however, there was the vaguer feeling that industry had recovered from its earlier setbacks with far less permanent damage than had been at first feared. The problem of financing industrial stocks was not likely to prove such a headache as it was in the year of the boom, industry was again building up its liquid resources, and—perhaps the most potent factor of all for investors in equity shares—the Government was not showing any sign of mourning while industry quietly buried the policy of dividend restraint.

Yet all these factors do not add up to a prescription for sustained strength in the market. The balance was and still is precarious. International uncertainties cannot be ignored for ever. And there was a reason for disquietude at home; it came to a head as far as the stock markets were concerned when a warning from Imperial Chemical Industries that its exports might be lower than the record level achieved in 1952 brought the rally in equity shares—if only temporarily—to a halt. And, of even more serious import for the British economy, the Treasury gave a gentle reminder in its latest *Bulletin for Industry* that British engineering exports were lagging behind (in relative, not absolute, terms) those of Germany and the United States.

Germany, in fact, was a sore point in the stock markets on more than one count. Many investors were flabbergasted by the behaviour of the Potash Syndicate of Germany in the negotiations for the resumption of the service of its debts. Its second offer to settle, though it represented an improvement upon the utterly impossible conditions of the first one, still fell short of the conditions that the bondholders' representatives in this country—who were quite rightly basing their conditions upon the general debt settlement—were prepared to accept. To break this deadlock, the next step will be to resort to arbitration; but this does not wipe out the disquieting fact that the German Potash producers, who, at the moment, are doing quite well for themselves, appear to wish to repeat the dreary round of proposal and counter-proposal that characterised the general debt negotiations.

This prospect did not particularly disturb the prices of the Potash issues, and, similarly, the gilt-edged market was left undisturbed by the announcement of two new issues. The first, and less important, of these was the offer by the Ayr County Council, the first county authority to take advantage of the new freedom granted to local authorities to borrow in the open market; the offer is worthy of notice, however, because, relying on the strength in the gilt-edged market, its sponsors cut its terms very finely, only to discover when the lists were closed that 60 per cent. of the issue had been left in the hands of the underwriters. This offer did not, of course, put any pressure on the market, but it gave a slight indication of what institutional investors are now willing to take into their portfolios. Nor did the second, and much more important, issue really test the market. This issue of a 4 per cent. Gas stock with a 16-19 year life at 99 duly wore the appearance of oversubscription, but it was virtually certain that almost the whole of the issue had been taken up by the authorities. In itself this may suggest the bullish implication that in the next few months the authorities believe there is a chance of being able to peddle the loan out through the tap. And, indeed, after this issue the gilt-edged market remained firm, so that the *Financial Times* index of Government securities between July 22 and August 24 rose from 97·48 to 97·84; in the same period, the industrial Ordinary index rose from 120·5 to 124·3, the fixed interest securities index from 108·63 to 109·11 and the gold mines index from 86·44 to 87·64.

The First Steel Offers

Looking further ahead, the market will have to contend in the early autumn with the first public offers of steel shares. In announcing the private sale of *Templeborough Rolling Mills* back to its original owners, Sir John Morison, the chairman of the Realisation Agency, gave some details of the course that these public offers are likely to take. On this question the Agency has an open mind, but it intends, if possible, that the first offers should be of equity shares in the " Big Seven " of the industry—that is, Colvilles, Dorman Long, John Summers, Lancashire Steel, Stewarts and Lloyds, United Steel, and Whitehead Iron and Steel. Which will be the first company to test the market is still, of course, the Agency's secret; and while making these offers it may slip in one or two offers by the minor companies and, if the equity issues were not a success, it might reconsider the possibility of issuing some prior charge capital. As former shareholders in the steel companies on vesting day will be given preferential treatment, and as other Government securities will be accepted instead of cash as subscription payments, the offers have aroused some speculations. Has the Agency granted preferential treatment to former shareholders (as on vesting day) so as to ensure the support of the institutions that were heavy buyers of steel equities just before vesting day as a cheap way into the gilt-edged market? Will the arrangements for accepting gilt-edged stocks sharpen the edge of dealings by authorities in the markets in the early autumn? And will the publication of a list of prices for the gilt-edged stocks that will be accepted at subscription payments freeze the course of prices in the gilt-edged market until the subscriptions for the steel issues are sorted out? In fact, it looks as if investors will have to be on their toes in the autumn with a Government conversion offer and these steel offers pending.

More Freedom for the Trusts

Some pundits in the City associated these coming offers of steel shares with the greater freedom that the Chancellor has given to the investment and unit trusts to raise new capital. Until recently these trusts were not allowed to raise more than £50,000 in new capital in any one year. In a letter to the chairman of the Capital Issues Committee the Chancellor has now

relaxed this control by arguing that "the time has come when some departure from the rigid application of this policy is desirable, having in mind the part played by the investment trusts in the supply of risk-bearing capital for industry and the need to encourage savings at the present time." It could, of course, be pointed out by those with a taste for irony that these arguments applied equally as well in any of the post-war years as in 1953. Even so the Government's action in authorising the Capital Issues Committee "in appropriate cases" to give its consent to capital issues by the trusts of over £50,000 must be welcomed as the removal of one senseless obstacle in the way of risk investment.

Publications

CONTRACTS AND FINANCE. By W. Ashworth. *The History of the Second World War:* Civil series. (*H.M. Stationery Office and Longmans, Green & Co., Ltd., London. Price 22s. 6d. net.*)

This addition to the works on the history of the last war is the second in the war production section and logically follows *The Control of Raw Materials*, by F. Hurstfield. The subject covered is immense, not only because the contracts "range in size from battleships to buttons, and in destructiveness from bombers to chaplains' demobilisation outfits," but also because the financial policy in relation to these contracts underwent such great changes as the war progressed. "The outbreak of war might have been expected to and ultimately did produce much greater changes in financial and contracting policy. But initially change was kept to a minimum, with a view to seeing how things worked out and making such later adjustments as seemed necessary; empiricism became a deliberate choice. The result was that in many fields change had to be exceptionally drastic and sudden."

The main subjects dealt with in the thirteen chapters, five appendices and 309 pages are the exercise of financial control over the activities of the Supply departments, the attempt to devise a satisfactory price policy for war stores and the provision of capital for firms engaged in war production. Policy and practice both receive their share of the text, and examples, based on the records of Government departments, are a feature of the work. Chapters are devoted to the provision of working and fixed capital, sub-contract prices and profits and remuneration for agency work.

Throughout stress is placed on the difficulties of arriving at a solution to the problem of keeping production at its maximum and profits at their minimum. Excess Profits Tax at 100 per cent. was one of the biggest "niggers in the wood-pile." Reference is made to the innumerable fruitless hours that were spent in trying to persuade industrialists to expand their undertakings at their own expense—only to be faced at the end, as at the beginning, by the assertion that 100 per cent. E.P.T. had destroyed any advantage that they might have had from doing so. The chapter entitled "The Level of Profits on Contracts" makes particularly interesting reading and shows how political expediency regarding war profits can hamper the work of those who wished to make ever-expanding production their primary consideration. The questions were easy: "What is a reasonable rate of profit and how is it to be calculated?" Many pages are devoted to the numerous solutions to this problem.

The accountancy profession often found itself as the buffer between the client and the Ministry, and those who were engaged in reconciling the almost irreconcilable, and those who wish to study what really happened in those war years will find Mr. Ashworth's book fascinating reading and will find food for thought in a statement made in his final paragraph, "The most important thing about the system was that it worked"! H. B. S.

LETTERS FROM A BANK PARLOUR. By W. S. Hill-Reid, with a foreword by Richard Church. (*The Falcon Press (London), Ltd., 6 and 7, Crown Passage, Pall Mall, London, S.W.1. Price 9s. 6d. net.*)

A reviewer once admitted that he had spent so much time in writing his review that there was no time left for reading the book he was supposed to be reviewing. My experience has been exactly the reverse. I have spent so much time in reading the book that my review must, of necessity, be a dictation of general impressions. But that is perhaps not a bad principle in relation to a book of this character. I anticipated learned lectures on economics, statistics, the services rendered by a bank and other allied subjects, but my anticipations were ill-founded. From cover to cover the book provides very pleasant reading on a variety of subjects which come under the notice of a bank manager, but each chapter is written in conversational language and addressed to a young man or woman.

Many people wonder why a bank refers to its "customers" and not to its "clients." This is the explanation given by Mr. Hill-Reid:

> Many years ago, before the advent of the great banking institutions of today, the banker was often a brewer or tea-merchant or even a grocer. He was therefore disposed to refer to those who dealt on his banking side in the same terms as he referred to those who bought his beer, tea or sugar. The name has remained, although it may not be altogether appropriate now, for a customer is usually one who purchases goods from the vendor and apart from services, the banks really sell nothing at all.

The contacts between the bank manager and the customers, visitors, lawyers, accountants, stockbrokers and other persons, are explained in language which is simple but full of sound principles. A timely warning is given not to listen to unprofessional "know-alls" who are always ready to give wonderful advice on methods to "double your capital." Such persons are described as "Serpents in striped trousers," which is a delightful tilt at City dress.

When I came to the chapter headed "The Executor and Trustee" I almost expected to find an advertisement of the services of banks in this connection; but if the author had been at all tempted in that direction he certainly resisted the temptation, because he writes in quite general terms about the position of an executor whoever he or she may be. There is one chapter on "High Finance," including the dollar gap, but it is purposely written down to the level of the younger reader to whom it is addressed.

I enjoyed, too, the poetic foreword by Richard Church who calls attention to the fact that these letters are not wholly admonitory or even academic but, rather, that they give touches of humour and of sentiment, thus displaying another side to the banker's personality. R. A. W.

BOOKS RECEIVED

HOUSING STATISTICS, 1951-52. (*Institute of Municipal Treasurers and Accountants, 1, Buckingham Place, S.W.1. Price 7s. 6d. post free.*)

THE SECRETARIAL PRACTICE OF LOCAL AUTHORITIES. By W. Eric Jackson, LL.B., Barrister-at-Law. (*W. Heffer & Sons, Ltd., Cambridge. 20s. net.*)

Letters to the Editor

National Association of Practising Accountants

SIR,—I give below a copy of a letter which has been sent in identical terms to each of the bodies named therein for their early consideration.

In the meantime those practitioners who recognise the need for such a body as N.A.P.A. are invited to register their names and addresses with me (together with any suggestions they may care to submit). On the other hand if there are some practising accountants who do not desire such an association to come into being perhaps they will also kindly write me their reasons.

Yours faithfully,
R. SPROULL (Senior), C.A.

28, Great Queen Street,
London, W.C.2.
August 1, 1953.

To the Council of each of:

The Institute of Chartered Accountants of Scotland,

The Institute of Chartered Accountants in England and Wales,

The Society of Incorporated Accountants and Auditors,

The Association of Certified and Corporate Accountants,

and

To the Co-ordinating Committee of these bodies.

Jointly and severally.

Gentlemen,

NAPA

1. This letter is to inform you of the intentions of the promotors of a proposed co-ordinating body of practising accountants. Membership of your bodies is represented amongst the promoters. The proposed name of the new body is The National Association of Practising Accountants (NAPA).

2. NAPA is not intended to compete with you, but rather is proposed to fill a much felt need for an association to serve the special interests of practising accountants, both as employers and in their relationships with clients and the public. It thus follows that NAPA will not enter your main field, the academic one of holding examinations and giving qualifications, nor will it permit its members to use its name or designatory letters as indicative of accountancy qualifications.

3. NAPA's proposed objects fall into two groups, viz. Nos. i, and ii to vii.

i. Registration,
ii. Representing the unified interests of practitioners, and the protection of the interests of practising accountants generally,
iii. Information on the conduct of practice,
iv. To give guidance on fees,
v. To organise pension schemes for the benefit of practitioners and their staffs,
vi. To facilitate the transfer of accountancy work from unqualified persons to our appropriate members,
vii. To obtain benefits on practice costs for members.

4. Object No. i, Registration, is so overwhelmingly important that it alone can justify NAPA coming into being. We consider that previous attempts at Registration have failed owing to the lack of a unified body which can speak directly for, and exercise authority in, the name of all practising accountants. This object will also lead—for the requirements of the Registration Bill—to a need to define practitioners' work more precisely but nevertheless sufficiently broadly, and in due accord with the actual scope of the activities of practising accountants. This will impose upon us the duty of an early ironing out of difficulties with related professions and others so that our Registration efforts and objectives will have a wide understanding and support both in the profession and by the public at large. In our view, only a body such as NAPA which can speak for all practising accountants regardless of their individual qualifications can achieve this all important objective of Registration.

5. Although Objects Nos. ii to vii may cover some activities in which you have been concerned, we feel the limited and recent extent of your interest here indicates the difficulties with which you are faced in these fields and we feel NAPA can fill these needs more effectively and, we hope, to your own ultimate advantage. Thus we judge you have approached these problems from a predominantly academic standpoint, but our function will be to deal with them from an essentially practical aspect.

6. We feel that as our activities and experience extend, we can co-operate usefully in the interests of the profession as a whole by relieving you of some of your activities which impinge on some of ours, so that you will be enabled to concentrate upon the so important needs of the educational side of accountancy.

7. NAPA intends to maintain amongst its members high ethical standards and will be glad to co-operate with you in respect of mutual members.

8. In general, it has not been your practice to provide a service centre of information and advice for practising members and, indeed, if each examining body of accountants were to attempt to set up an organisation the consequent multiplication would obviously entail overall expenditure far in excess of that involved for the unified service envisaged by NAPA. Nor should it be overlooked that one of the important advantages in having one organisation—such as NAPA—fostering the activities it contemplates is that practitioners of all bodies, and of none (until Registration is achieved), will have opportunities of meeting together and more readily getting common agreement on common problems.

9. However they are considered, it can be seen that NAPA's proposed essential functions will not trespass on yours. In due course it is hoped that we shall receive the support of your Council members (who are practitioners) and of your practising members generally and your co-operation to that end will be appreciated. We shall be glad to know, therefore, how sympathetic you are to our proposals. Thereupon, if there appears to be a basis on which this sympathy with us could be deepened we would welcome representation from your co-ordinating committee to join in NAPA's promotion.

10. As the matter of this letter is of public interest in the profession, a copy is also being sent shortly to your accountancy Press for publication.

Yours faithfully,
HUBERT E. BROWN, A.S.A.A.,
HARRY LUCAS, A.A.C.C.A.,
STANLEY MCCOMBIE, F.C.A.,
EDWARD S. SMITH, A.C.A.,
R. SPROULL (Senior), C.A. and others
for the Promoters of NAPA.
R. SPROULL.

We are authorised to publish the following letter which has been sent by the Deputy Secretary of the Society of Incorporated Accountants to Mr. Sproull.

DEAR SIR,—Your letter dated July 27, 1953, on the subject of the proposed formation of the " National Association of Practising Accountants " has now been considered by the Council of the Society.

The Council is of opinion that the reasons advanced for the formation of this new Association indicate clearly that such a step is quite unnecessary so far as members of the Society are concerned. The duty of protecting the interests of the Society's members rests on the Council, which, on all matters affecting the profession as a whole, acts in close association with the other recognised accountancy bodies. Accordingly, members of the Society will be informed that its Council strongly deprecates the formation of a further body.

Yours faithfully,
C. EVAN-JONES,
Deputy Secretary.

Society of Incorporated Accountants and Auditors.

Incorporated Accountants' Hall,
London, W.C.2.
August 17, 1953.

Legal Notes

Company Law—Valuation of Shares by Auditor.

The case of **Dean *v.* Prince,** which was noted in ACCOUNTANCY for August, 1953 (page 246), has now been reported in 1953, 3 W.L.R. 271.

Contract and Tort—Fees for Work Done on Sundays.

In **Gregory *v.* Fearn** (1953, 1 W.L.R. 974), an estate agent sued for his commission under an agency agreement which had been signed on a Sunday. By Section 1 of the Sunday Observance Act, 1677, ". . . no tradesman artificer workman labourer or other person whatsoever shall do or exercise any worldly labour, business or work of their ordinary callings upon the Lord's Day or any part thereof (works of necessity and charity only excepted)." The County Court Judge held that the making of the agreement on a Sunday involved the doing on the Lord's Day of business or work by a tradesman, that is, an estate agent in his ordinary calling, and therefore the estate agent was not entitled to sue on the agreement. The Court of Appeal disagreed with this view and said that an estate agent was not a "tradesman" and did not come within the Section.

Doubtless accountants are also outside the Section and may legally work on Sundays if they wish.

Contract and Tort—Sale of Unroadworthy Car.

It is well known that by Section 3 of the Road Traffic Act, 1930, and the regulations made thereunder it is an offence to use on the road a car suffering from such defects as a speedometer which is not working or a steering wheel with too much play in it. It is not so well known that by Section 8 (1) and (3) of the Road Traffic Act, 1934, it is unlawful to sell a car in such a condition that the use of it on a road in that condition would be unlawful under Section 3 of the 1930 Act. The seller's ignorance of the defect seems to be no excuse, but by Section 8 (4) it is a defence to prove that the seller had reasonable cause to believe that the car would not be used on a road in Great Britain (for example, because it was sold as scrap) or would not be so used until it had been put into a condition in which it might lawfully be so used.

In the case of **Vinall *v.* Howard** (1953, 1 W.L.R. 987), V. sold a car which he knew to be suffering from defective brakes. He pointed this out to the purchaser, who gave him a cheque and drove the car away. Unbeknown to V. the car also had a broken chassis (oddly enough, the use of a car with a broken chassis is not forbidden by the regulations), and when the purchaser discovered this he stopped his cheque; V. then sued him. Streatfeild, J., held that V. could not succeed; the car was unroadworthy when it was sold, and although V. might reasonably have expected that the purchaser would soon put the defective brakes in order he must have realised that the purchaser would drive the car home in its defective state. V. had therefore committed an offence, the contract of sale was illegal and V. could not recover the price.

Miscellaneous—Accountants' Working Papers.

The case of **Chantrey Martin (a firm) *v.* Martin,** which was noted in ACCOUNTANCY for August, 1953 (page 245), has now been reported in 1953, 3 W.L.R. 459.

Miscellaneous—Extent of Mortgagee's Right to Costs against Mortgagor.

Normally a litigant who has been ordered to pay the costs of the proceedings will not have to pay the whole of the solicitors' bill which his opponent will have to meet. In technical language the costs will be taxed on a "party-and-party" basis, that is, the costs chargeable are all that are necessary to enable the adverse party to conduct the litigation, and no more. Any charges merely for conducting litigation more conveniently may be called luxuries and must be paid by the party incurring them. Where there is no actual litigation the definition applies as though it referred to transacting business as well as to conducting litigation.

In **Re Adelphi Hotel (Brighton) Ltd.** (1953, 1 W.L.R. 955), a mortgage was expressed to be a security for payment to the mortgagee bank of, *inter alia*, "all costs charges and expenses incurred or paid by the bank in relation to the negotiation for and preparation completion realisation and enforcement of this security." The bank obtained a consent judgment for the enforcement of the security and claimed that their costs should be taxed on terms more favourable to them than a party-and-party basis. Vaisey, J., said that any basis of taxation other than party-and-party is only justified when the party asking for it can show that he is entitled to it either upon some well-recognised principle or under some contract plainly and unambiguously expressed; there was no general principle which entitled mortgagees to have some other basis of taxation nor were the words of the mortgage apt to exclude the normal rule. Taxation must be on a party-and-party basis.

Mortgagees who wish to have a full indemnity for their costs from mortgagors should therefore see that the mortgage deed is suitably worded.

Executorship Law and Trusts—Trustees' Costs.

Another case concerned with costs, this time the costs of trustees, was **In Re Dargie, deceased** (1953, 1 W.L.R. 991). An action had been brought by beneficiaries under a will against the trustees personally and an order was made that the trustees' costs should be taxed as between solicitor and client and paid out of the estate. Certain disbursements, including a portion of counsel's fees, were disallowed on taxation and the trustees took out a summons to determine whether they could pay out to themselves from the estate the amount disallowed.

Vaisey, J., held that they could not do so; generally speaking, trustees were entitled to their costs on an indemnity basis provided that the costs were incurred solely for the purpose of benefiting the trust estate, but there was no such rule where the litigation was designed to define and secure the personal rights of the trustees as individuals. The order that taxation should be on a solicitor and client basis was quite clear and, in spite of the name, taxation on that basis was not on an indemnity basis but was substantially a party-and-party taxation on a more generous scale. The trustees were not, therefore, entitled to an indemnity.

Executorship Law and Trusts—Reasonable Provision for Dependants.

Under the Inheritance (Family Provision) Act, 1938, the Court may make orders under the Act if it is of opinion that a will does not make reasonable provision for the maintenance of dependants. In **Re Howell** (1953, 1 W.L.R. 1034), the Court of Appeal approved of the decisions of Courts of first instance that the Court will only make an order if it considers that the testator acted unreasonably in making his dispositions; it will not interfere merely because in the Court's opinion it would

have been better for the testator to have made some other disposition.

In the same case the Court of Appeal also held that the question of reasonableness must be judged in the light of the circumstances which did present, or which should have presented, themselves to the testator up to the moment of his death.

Executorship Law and Trusts—Advancements.

The facts in **Re Shephard** (1953, 3 W.L.R. 378) were somewhat complicated. In 1929 a father promoted some private companies and had the shares allotted to his three children. The companies prospered and in 1934 the father sold out to a public company; the children were not told of the sale and signed the necessary documents without realising what they were. The father paid the cash received on the sale into his own account but shortly afterwards paid it into three deposit accounts standing in the names of the children. Later, at the father's request and without realising what they were doing, the children signed mandates authorising the father to draw on these accounts. Eventually he withdrew the whole of the money and used it for his own purposes. None of this money was ever given back to the children, but before his death the father made them other substantial gifts. After his death two of the children claimed as creditors against the executors the balance of the moneys representing the proceeds of the sale of the shares which had been allotted to them in 1929.

The Court of Appeal affirmed the decision of Harman, J., that their claim failed. The onus was upon them to show that in 1929 the father had made absolute and unqualified gifts to them. It was quite true that the allotment of shares in their name raised a presumption of advancement, but that presumption could be rebutted, and on the facts the father always intended to retain control of the shares and did not intend to make an out-and-out gift.

Insolvency—Time Limit for Petition Following Bankruptcy Notice.

The Ampthill Rural District Council has been having a fascinating, if expensive, dispute with a ratepayer over the payment of rates and water rates. In April, 1951, the Council obtained an order for the payment of £2 12s. 6d., the amount of the water rate; they then served a bankruptcy notice in respect of this judgment and the debtor applied to have the bankruptcy notice set aside. On September 10, 1952, the registrar dismissed this application, and, although an appeal was allowed by the Divisional Court, on February 10, 1953, the registrar's order was restored by the Court of Appeal (*In re a Debtor, No. 48 of 1952* (1953, 1 Ch. 335)). On March 10, 1953, the Council presented a petition and a receiving order was made, but in the latest round of the dispute the debtor has succeeded in having this receiving order discharged by the Divisional Court (**In re a Debtor, No. 10 of 1953** (1953, 1 W.L.R. 1050)).

Before the Divisional Court there were several grounds of appeal, but the only important ground was that the petition was out of time as it was more than three months after the service of the bankruptcy notice. Against this the Council argued that either the notice of appeal against the registrar's decision or the order of the Divisional Court setting aside the bankruptcy notice in some way suspended the running of time and that time remained so suspended until the final determination of the matter by the Court of Appeal. The Divisional Court refused to accept this argument. They said that in the absence of a special order an appeal does not operate as a stay of execution or proceedings and that the effect of the decision by the Court of Appeal was to restore the registrar's decision with effect from the date when it was made. The petition was therefore out of time and the receiving order must be discharged.

THE SOCIETY OF
Incorporated Accountants

COUNCIL MEETING

JULY 21, 1953

Present: Mr. C. Percy Barrowcliff (President), Mr. Bertram Nelson (Vice-President), Mr. A. Stuart Allen, Mr. F. V. Arnold, Mr. Edward Baldry, Mr. R. Wilson Bartlett, Mr. Robert Bell, Mr. C. V. Best, Professor F. Sewell Bray, Mr. Andrew Brodie, Mr. Henry Brown, Mr. E. Cassleton Elliott, Mr. M. J. Faulks, Mr. W. H. Fox, Mr. Alexander Hannah, Mr. L. C. Hawkins, Mr. C. A. G. Hewson, Mr. W. H. Higginbotham, Mr. Hugh O. Johnson, Sir Thomas Keens, Mr. Festus Moffat, Mr. T. H. Nicholson, Mr. F. A. Prior, Miss Ridgway, Mr. W. G. A. Russell, Mr. R. E. Starkie, Mr. Joseph Stephenson and Mr. Richard A. Witty, with the Secretary and the Deputy Secretary.

COUNCIL

The President welcomed Mr. Festus Moffat, O.B.E., President of the Scottish Branch, who took his seat on the Council for the first time.

It was resolved that a letter be sent to Sir Arthur Middleton, congratulating him on the Knighthood conferred upon him by Her Majesty the Queen and expressing the Council's hopes that his health would soon be restored.

It was resolved that a letter be sent to Mr. John Ainsworth, M.B.E., expressing the Council's congratulations upon the honorary degree of Master of Commerce conferred upon him by Liverpool University.

CORONATION OF HER MAJESTY QUEEN ELIZABETH

The President reported that he had attended the Coronation of Her Majesty the Queen in Westminster Abbey on June 2 as the representative of the Society.

It was reported that Mr. Ritchie had represented the Society at the National Service of Thanksgiving and Dedication in St. Giles' Cathedral, Edinburgh, on June 24, at which Her Majesty and the Duke of Edinburgh were present, at the subsequent Garden Party on the same day and at the Reception on June 26 at the Palace of Holyrood House.

The President reported that he had received the following letter from the Home Secretary:

> Sir,—I have had the honour to lay before the Queen the Loyal and Dutiful Address of the President, Vice-President, Council and Members of the Society of Incorporated Accountants and Auditors on the occasion of Her Majesty's Coronation, and I have it in Command from the Queen to convey to you Her Majesty's warm thanks for the expressions of loyalty and devotion which it contains.

REPORTS OF COMMITTEES

The Council received the minutes of recent meetings of the Finance and General Purposes, Examination and Membership, Development, and Applications Committees, and of the South African Branches.

GRANTS TO BRANCHES AND DISTRICT SOCIETIES

The Council endorsed the decision of the Finance and General Purposes Committee

to increase the amount allocated for grants to Branches and District Societies for the year ending March 31, 1954.

AMERICAN INSTITUTE OF ACCOUNTANTS

It was decided to accept the invitation of the American Institute of Accountants to send a representative to their annual meeting in New York from October 16 to 21, 1954. It was agreed that the then President of the Society should make this visit.

COURSE AND CONFERENCE, 1954

The Council resolved that a course in management accounting be held in Oxford in 1954 and that a conference be held in Eastbourne during June 1954.

NUMBER OF ARTICLED CLERKS TO BE RETAINED BY PRACTISING MEMBERS

Bye-laws 20 and 21 were cancelled and the following were substituted:

Bye-law 20: Articles of Clerkship may, by permission of the Council, be transferred to another member of the Society competent to take in his service an articled clerk in the event of the principal ceasing to be a member of the Society by resignation, forfeiture of membership or otherwise or ceasing to be a member in practice as defined by Article 22, or by agreement between the parties thereto. In the event of the death of the principal fresh articles may be entered into for the unexpired term of service.

Bye-law 21: A member of the Society, being a Fellow, shall not have more than four, or, being an Associate, more than two articled clerks during the whole or any part of the same period, provided that these restrictions shall not apply to an articled clerk under the Joint Universities Scheme or to an articled clerk in respect of whom the articles of clerkship are transferred pursuant to the provisions of Bye-law 20.

BYE-LAW CANDIDATES

Bye-law 23 was cancelled and the following was substituted:

Except in the case of honorary members and members admitted under the provisions of Article 13 every applicant for membership of the Society shall be required to satisfy the Society that within three months from the date of the commencement of his service under articles of clerkship or within three months from the date on which he was registered under the provisions of the Society's Bye-laws (as the case may be), he became a member of the Students' Section of a Branch or District Society of the Society or a member of an Incorporated Accountants' Students' Society and that he has continued to be a member of one or other of such Branch, District or Students' Societies up to the date of his application; and to undertake that he will so continue until he becomes a member of the Society, or until he is notified that his application is accepted (as the case may be). Every applicant for the Intermediate Examination and the Final Examination and for membership of the Society shall forward with his application a certificate or certificates furnished by the Secretary or Secretaries of the Branch, District or Students' Society or Societies of which the applicant has been a member at any time during the period covered by the certificate as to (1) the period during which the applicant has been a member of any such Society and (2) any subscription or subscriptions due to the Society concerned from the applicant during such period having been duly paid.

CENTRAL AFRICAN BRANCH

The Council confirmed the decision reached at a meeting in Salisbury, Southern Rhodesia, on June 26, to establish a Central African Branch of the Society with effect from January 1, 1954. The appointment of a temporary Committee was also confirmed.

MEMBERSHIP

The Council approved applications for promotion to Fellowship, for admission to membership of the Society, and for registration as members in retirement subject to payment of the appropriate entrance fees and subscriptions.

RESIGNATIONS

It was reported that the resignations of the following members had been accepted: BLACK, Richard Arthur (Associate) London; KENCH, Edwin George (Associate) Sutton.

DEATHS

The Council received with regret a report of the death of each of the following members: Brunton, David Moncur Anderson (Associate), Detroit, U.S.A.; Busher, Sydney Edmund (Associate), Sydney, Australia; Dugmore, Cecil Egerton (Associate), Springs, South Africa; Eve, Marcus Huntingdon (Associate), Coleford; Fleming, Henry Macpherson (Associate), London; Hutchinson, Eric Humphreys (Associate), Liverpool; Macalister, William Wylie (Fellow), Worthing; McArthur, Harold (Associate), London; Maloney, Christopher Ronald (Associate), London; Osborne, Joseph (Associate), Belfast; Sayer, Victor Wilfrid (Associate), Surbiton; Smith, George (Associate), Newcastle upon Tyne; Varney, Harold Oswald (Associate), London.

EVENTS OF THE MONTH

September 7.—*Luton:* "Finance Act, 1953," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A. Students' meeting. George Hotel, at 6.15 p.m.
September 17-22.—*Society of Incorporated Accountants:* Taxation Course at King's College and Gonville and Caius College, Cambridge.
September 21.—*Coventry:* "Executorship Accounts," by Mr. R. Glynne Williams, F.C.A., F.T.I.I., Craven Arms, High Street, at 6.30 p.m.
September 24.—*Bradford:* "Executorship Accounts," by Mr. V. S. Hockley.
September 25.—*Bristol:* "Figures at Work." Film show by British Tabulating Machine Co., Ltd. Royal Hotel, College Green, at 6.30 p.m.
Manchester: "Elements of English Law," by Mr. J. Stewart Oakes. Students' meeting. Incorporated Accountants' Hall, 90, Deansgate, at 6.30 p.m.
September 26.—*Leeds:* "Duties of Auditors in relation to Internal Check," by Mr. C. S. Paylor, A.S.A.A., A.C.A. Students' class.
September 28.—*Sheffield:* District Society annual general meeting. Grand Hotel, at 5.30 p.m.
September 28-October 2.—*London:* Non-residential pre-examination courses for Intermediate and Final candidates. King's College.
October 2.—*Birmingham:* "Some Costing Problems," by Mr. W. W. Bigg, F.C.A., F.S.A.A. Law Library. Temple Street, at 6.15 p.m.
Manchester: "Elements of English Law," by Mr. J. Stewart Oakes. Students' meeting. Incorporated Accountants' Hall, 90, Deansgate, at 6.30 p.m.
October 3.—*Leeds:* "Statutory Apportionments," by Mr. K. P. Proctor, A.S.A.A. Students' class.
October 5.—*Coventry:* "Legal and Equitable Apportionments," by Mr. C. L. Lawton, M.SC. (ECON.), Barrister-at-Law. Craven Arms, High Street, at 6.30 p.m.
Middlesborough: "Accounting," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A.
October 6.—*Newcastle upon Tyne:* "Valuation of Shares for Estate Duty," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A. The Library, 52, Grainger Street.
October 7.—*Newton Abbot:* Lecture on "Accountancy."
October 8.—*Bradford:* "Some Difficult Problems in Company Accounts," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A.
Plymouth: Lecture on "Accountancy."
October 9.—*Birmingham:* "Modern Accounting Principles," by Mr. R. Glynne Williams, F.C.A., F.T.I.I. Law Library, Temple Street, at 6.15 p.m.
Bristol: "Some Current Economic Problems," by Mr. A. L. Dalby, B.SC.(ECON.). Royal Hotel, College Green, at 6.30 p.m.
Manchester: "Elements of English Law," by Mr. J. Stewart Oakes. Students' meeting. Incorporated Accountants' Hall, 90, Deansgate, at 6.30 p.m.
Truro: Lecture on "Accountancy."

EXAMINATIONS, NOVEMBER 1953

THE SOCIETY'S EXAMINATIONS WILL BE HELD on the following dates:

Preliminary:		November 10 and 11, 1953.
Intermediate:		November 12 and 13, 1953.
Final:	Part I	November 10 and 11, 1953.
	Part II	November 12 and 13, 1953.

The centres will be Belfast, Birmingham, Cardiff, Dublin, Glasgow, Leeds, Liverpool, London, Manchester and Newcastle upon Tyne.

Completed applications, together with all the relevant supporting documents and the fee (Final, Part I, £4 4s.; Part II, £4 4s.; Parts I and II together, £7 7s.; Intermediate, £4 4s.; Preliminary, £3 3s.); must reach the Secretary, Incorporated Accountants' Hall, Temple Place, Victoria Embankment, London, W.C.2, not later than Monday, September 21, 1953.

Candidates are asked to obtain application forms from the Honorary Secretary of their Branch or District Society.

SCOTTISH BRANCH

COUNCIL MEETING

A MEETING OF THE COUNCIL OF THE SCOTTISH Branch was held on July 29, at which Mr. Festus Moffat, O.B.E., J.P., presided.

The Council considered letters from the Stamp-Martin Professor on the Companies Act, 1948, and estate duty anomalies, and members were asked to submit notes on these subjects to the Secretary for transmission to him.

The Chairman reported that the Rt. Hon. Thomas Johnston, C.H., former Secretary of State for Scotland, had agreed to be the principal guest of the Council at a luncheon to be held in Glasgow on October 27, 1953. The Chairman also reported on his first attendance at a meeting of the London Council and his appointment to committees on that Council.

A report was received on facilities for students to attend classes in the Accountancy Department of the Glasgow and West of Scotland Commercial College. Owing to lack of evening accommodation, it was agreed to recommend to members of the Branch that students be released for one day in each week to attend these classes. The Secretary was instructed to make inquiries about lectures for accountancy students at the University of Glasgow.

LONDON STUDENTS' SOCIETY

PRE-EXAMINATION COURSES

As announced in the August issue of ACCOUNTANCY, non-residential pre-examination courses for both Intermediate and Final Examination candidates will be held at King's College, London, from Monday, September 28 to Friday, October 2. The programme for the courses is as follows:

Intermediate Course

SEPTEMBER 28

"Negotiable Instruments," by Mr. St. John Chester, Barrister-at-Law.
"Companies Act—Table A," by Mr. St. John Chester, Barrister-at-Law.
"Profits Tax," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A.
"Taxation in Company Accounts," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A.

SEPTEMBER 29

"Standard Costing," by Mr. W. W. Bigg, F.C.A., F.S.A.A.
"Costing," by Mr. W. W. Bigg, F.C.A., F.S.A.A.
"Law of Contract," by Mr. O. Griffiths, M.A., LL.B., Barrister-at-Law.
"Sale of Goods Act," by Mr. O. Griffiths, M.A., LL.B., Barrister-at-Law.

SEPTEMBER 30

"Branch Accounts," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A.
"Estate Duty Accounts and Apportionments," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A.
"Schedules A, B, C and E," by Mr. Percy F. Hughes, A.S.A.A.
"Schedule D Computations," by Mr. Percy F. Hughes, A.S.A.A.

OCTOBER 1

"Accounts in Bankruptcy and Liquidation" by Mr. K. S. Carmichael, A.C.A.
"Reconstructions," by Mr. K. S. Carmichael, A.C.A.
"The Bank of England," by Mr. H. C. Edey, B.COM., A.C.A.
"Financial Institutions," by Mr. H. C. Edey, B.COM., A.C.A.

OCTOBER 2

"Partnership Accounts," by Mr. R. Glynne Williams, F.C.A.
"Incomplete Records," by Mr. R. Glynne Williams, F.C.A.
"Auditing," by Mr. A. C. Simmonds, F.S.A.A. (two lectures).

Final Course—Part I

SEPTEMBER 28

"Costing," by Mr. W. W. Bigg, F.C.A., F.S.A.A. (two lectures).
"Group Accounts," by Mr. A. E. Langton, LL.B., F.C.A., F.S.A.A. (two lectures).

SEPTEMBER 29

"Partnership Accounts," by Mr. R. Glynne Williams, F.C.A.
"Branch Accounts," by Mr. R. Glynne Williams, F.C.A.
"Auditing," by Mr. A. C. Simmonds, F.S.A.A. (two lectures).

SEPTEMBER 30

"Executorship Accounts," by Mr. K. S. Carmichael, A.C.A.
"Company Accounts," by Mr. K. S. Carmichael, A.C.A.

Final Course—Part II

SEPTEMBER 30

"Company Law and Partnership Law," by Mr. R. D. Penfold, LL.B., Barrister-at-Law.
"Executorship Law and Trustees," by Mr. R. D. Penfold, LL.B., Barrister-at-Law.

OCTOBER 1

"Profits Tax," by Mr. H. A. R. J. Wilson, F.C.A., F.S.A.A. (two lectures).
"Current Financial Trends," by Mr. L. T. Little, B.SC. (ECON.).
"Current Economic Trends," by Mr. L. T. Little, B.SC. (ECON.).

OCTOBER 2

"Schedule D with particular reference to partnership and reliefs for losses," (covering two lecture periods), by Mr. L. A. Hall, A.C.A., A.S.A.A.
"Law of Contract," by Mr. O. Griffiths, M.A., LL.B., Barrister-at-Law.
"Bankruptcy and Liquidations," by Mr. O. Griffiths, M.A., LL.B., Barrister-at-Law.

The cost to each student attending will be as follows:

Intermediate Course—£3.
Final Course—Parts I and II—£3.
Final Course—Part I only—£1 10s.
Final Course—Part II only—£1 10s.

These courses are open to examination candidates from any part of the United Kingdom and the Republic of Ireland. Application forms may be obtained direct from the Secretary of the London Students' Society or from Honorary Secretaries of District Societies. The closing date for receiving applications is Monday, September 14.

BIRMINGHAM

AT A COMMITTEE MEETING ON AUGUST 7 the following officers were appointed: President, Mr. P. G. Stembridge; Vice-Presidents, Mr. B. Baker, Mr. V. W. Grosvenor, Mr. T. Harold Platts, Mr. John J. Potter, Mr. W. G. A. Russell, Mr. Arthur W. Watson; Hon. Treasurer, Mr. C. H. Hills; Hon. Librarian, Mr. S. H. Thurstans; Hon. Secretary, Mr. C. Wheatley.

BOMBAY

THE TWENTIETH ANNUAL GENERAL MEETING was held on May 23. Mr. P. C. Hansotia, B.COM., F.S.A.A., was elected Chairman, and Mr. L. C. Hansotia, B.COM., A.S.A.A., Honorary Secretary and Treasurer. The following members were elected to the Committee: Mr. B. E. Kumana, Mr. P. C. Hansotia, Mr. N. J. Shah, Mr. R. C. Divan, Mr. R. C. Jallundvalla, Mr. K. S. Engineer, Mr. D. H. Kabraji, Mr. G. H. Gondalia, Mr. H. P. Dalal, Mr. C. R. Mucadam, Mr. L. C. Hansotia, Mr. S. D. Masani.

BRADFORD

REPORT

THE MEMBERSHIP COMPRISES 289 FELLOWS and Associates and 221 students—an aggregate decrease from 526 last year to 510.

An enjoyable dinner dance was held in October 1952. It is hoped to make this an annual event. A cricket match was played on June 10, 1952, when members beat the students.

Congratulations are extended to students successful in the Society's examinations, especially to P. Brook, who received the Second Certificate of Merit in the Final, and E. Darbyshire, who was awarded the first

place certificate and first prize in the Intermediate, both in May 1952.

DEVON AND CORNWALL

REPORT

THE COMMITTEE ARRANGED LECTURES AT Plymouth, Exeter, Newton Abbot, Truro and Camborne. The poor response at Plymouth caused concern, but was offset by excellent attendances elsewhere.

A dinner was held at Plymouth in November 1952, when the Vice-President of the Society, Mr. Bertram Nelson, was the principal guest.

During the year a sub-committee made a report on tax procedure, with special reference to appeals. This was sent to the Council of the Society.

DUBLIN STUDENTS

THE DUBLIN STUDENTS' SOCIETY has arranged refresher courses for Intermediate and Final candidates to be held in Dublin from October 19 to 24. Mr. V. S. Hockley, B.COMM., A.C.A., will lecture on book-keeping and accounts and on cost accounts, and there will be lectures on executorship and income tax.

Members of the Waterford and Cork Students' Societies will be welcome. The charge is £3 3s. for Final and £2 2s. for Intermediate candidates. Applications should be sent with a deposit (Final, £1 1s., Intermediate, 10s. 6d.) to the Honorary Secretary, Mr. Arthur Hughes, c/o Messrs. Martin, Savage & Co., 31, College Green, Dublin.

MANCHESTER

THE SIXTY-SEVENTH ANNUAL GENERAL meeting was held on June 12, the President, Mr. Arthur T. Eaves, being in the chair. There was a good attendance of members.

The President and Hon. Secretary reported upon the year's activities. Retiring members of the Committee were re-elected, and Mr. N. D. B. Robinson—who had been appointed Assistant Hon. Secretary—filled one vacancy on the Committee. Other vacancies were filled by Mr. G. D. Ashcroft and Mr. C. J. Griffiths.

Prizes were presented to Mr. E. Darbyshire, who obtained First Place and First Prize in the May, 1952, Intermediate Examination, and to Mr. K. Ivison, who obtained honours in the Intermediate in November.

The President summarised the action taken regarding membership of the London Council and, after a full discussion, the meeting unanimously approved the action taken and requested the Committee to press the District Societies Conference to consider suitable amendment of the Society's Bye-Laws.

The following officers were appointed: President, Mr. Victor A. Bell; Vice-President, Mr. Frank O. Wilson; Hon. Treasurer, Mr. Thomas Hodgson; Hon. Secretary, Mr. C. Yates Lloyd; Assistant Hon. Secretary, Mr. N. D. B. Robinson.

REPORT

Four meetings were arranged jointly with other bodies. The Committee invites members to give their views upon the type of lecture or meeting likely to be of value.

The dinner was deferred to April 10, 1953, when there was a good attendance of members and guests.

The membership comprises 169 practising members, 352 non-practising, and 581 students: total 1,102.

Mr. N. D. B. Robinson has agreed to act as Hon. Assistant Secretary, and will be responsible for students' activities and interests.

The fifth successful students' refresher course was held at Hulme Hall in September. Unfortunately the courses involve substantial cost to the Society, and for this reason there will not be a course in 1953.

The officers and committee were pleased to meet at an informal dinner members who qualified in 1952.

NORTHERN IRELAND

REPORT

THE MEMBERSHIP COMPRISES: FELLOWS 37; Associates, in practice 28, employed in the accountancy profession 18, in Government Departments, public bodies and commercial firms 40; students 180.

During the year the District Society suffered loss by the death of Mr. Samuel Boyle, a past president; and of Mr. E. Buckley, one of our oldest members.

Three luncheon meetings and talks were held. Social events included two golf outings, one in conjunction with members from the Republic of Ireland; an official dinner; and a ball organised by the Students' Society.

A sub-committee prepared a memorandum on proposed changes in the new Bill in Northern Ireland on the Devolution of Property on Intestacy. This was forwarded to the Ministry of Commerce. A report was sent to London on the use of shares of no par value.

A Vice-President's badge of office was subscribed for by members, and was presented to the Vice-President of the parent Society, Mr. Bertram Nelson, by our President at the dinner in November.

The Students' Society had a successful session. Courses were arranged on taxation and advanced accounts, and pre-examination classes were held on Saturdays. There were also four special lectures and a debate with the Solicitors' Apprentices' Debating Society. Lectures were also arranged at Coleraine for students in that area.

NOTTINGHAM, DERBY & LINCOLN

THE ANNUAL GENERAL MEETING WAS HELD in Nottingham on July 30.

Presentations were made to two students who took honours at the Intermediate Examination of the Society in 1952.

A sub-committee was formed to prepare memoranda on possible revision of the Companies Act, 1948, and on the incidence of estate duty on family businesses.

Mr. P. W. Skinner was re-elected President, Mr. H. F. Ingram Vice-President and Mr. C. M. Foxon Honorary Secretary and Treasurer.

REPORT

The membership is 418, including 68 Fellows and Associates in practice, 148 not in practice, and 202 students.

Two students attained honours in the Intermediate Examination. Mr. P. L. Martin received the First Place Certificate and First Prize, and was awarded also the Sir James Martin memorial exhibition.

The biennial dinner was attended by a large number of guests. Seven lectures were held at Nottingham and one at Lincoln. Saturday morning lectures and pre-examination courses for students are held at the Technical College.

SOUTH WALES & MONMOUTHSHIRE

THE ANNUAL MEETING WAS HELD ON JULY 23. The following officers were elected: President, Mr. F. M. Forster; Vice-President, Mr. W. W. Stanley; Hon. Secretary, Mr. Tudor Davies.

The retiring members of the Committee were re-elected.

REPORT

During the year 23 student members were admitted.

The Committee congratulates the students who were successful at the examinations of the parent Society. Fourteen passed the Final and 21 the Intermediate.

Twenty-one lecture meetings were held. Three of these were in the nature of discussion groups, ably conducted by Mr. J. D. R. Jones, at which points and problems experienced by practitioners in connection with taxation and general points in practice were considered and discussed. Members expressed satisfaction with this innovation.

The Committee records with deep regret the death of Mr. Leonard W. C. Paterson, Fellow, who had been a member of the District Society for over 40 years.

A dinner was held on March 27. The success of the two golf meetings, under the captaincy of Mr. T. R. Morris, was a tribute to the excellent arrangements made by the

secretary of the Golf Society, Mr. C. H. Dawson.

During the year, the Committee submitted to the parent Society a memorandum on shares of no par value and observations on the activities of District Societies.

WEST OF ENGLAND

A CRICKET MATCH WAS PLAYED ON JULY 30, between our students and Bristol Law Students' Society. Although beaten by six wickets, the Incorporated students put up a respectable performance in their first match. It is hoped to form a team to play several matches in 1954.

PERSONAL NOTES

FOR SERVICES IN CONNECTION WITH THE Coronation, Group Captain S. C. George, O.B.E., A.S.A.A., R.A.F. (retired), has been made a Member of the Royal Victorian Order.

The lists of Coronation Honours in our last two issues (July, page 213, and August, page 247) should have included the name of Mr. Robert Kerr, A.S.A.A., Deputy Accountant to the North Western Gas Board, Manchester, who received the M.B.E.

Mr. D. Hartwell, A.S.A.A., of the Directorate of Contracts, Ministry of Works, has been seconded to the Ceylon Government under the technical co-operation scheme of the Colombo Plan. He will help in the training of Ceylonese accountants in the Ceylon Department of Industries.

Mr. E. Cecil Barber, F.S.A.A., practising under the style of E. C. Barber & Co., Incorporated Accountants, London, E.C.3, announces that he has admitted Mr. E. P. Kachel, A.S.A.A., into partnership. The name of the firm is unchanged.

The partnership between Mr. Richard F. Harding, A.S.A.A., A.C.A., Mr. Wilfrid B. Vidgeon, F.S.A.A., A.T.I.I., and Mr. Henry R. Elliott, F.S.A.A., A.C.A., hitherto practising as Walpole, Harding, Vidgeon & Elliott, Incorporated Accountants, has been dissolved. Mr. Vidgeon and Mr. Elliott are now practising with Mr. L. E. V. Masters, A.S.A.A., at 9, Liverpool Gardens, Worthing, under the style of Walpole & Co., Incorporated Accountants. Mr. Harding is practising at 49, Montpelier Road, Brighton, under the style of Walpole, Harding & Co., Chartered Accountants.

Mr. L. D. Lopes, Certified Accountant, has been joined in partnership by Mr. E. Seaton Lees, Incorporated Accountant, in the firm of Lopes & Co., Broadstairs.

Mr. Douglas W. Henley, Incorporated Accountant, has started practice at 7, Carteret Street, Queen Anne's Gate, London, S.W.1.

Messrs. F. F. Sharles & Co., London, E.C.2, announce that Mr. E. W. Rufus, F.S.A.A., has retired from the firm, and Mr. N. K. Junor, Incorporated Accountant, has been admitted as a partner.

Mr. J. L. Bayliffe, A.S.A.A., A.T.I.I., Taunton, has changed the style of his practice from Davidson & Co. to J. L. Bayliffe & Co., Incorporated Accountants.

Mr. Benjamin Epstein, A.S.A.A., has been appointed Secretary of Sangamo Weston, Ltd., Enfield. He retains the position of Assistant Accountant to the company.

Mr. T. N. T. Mansfield, Incorporated Accountant, has commenced public practice at 11-12, Skinner Street, Newport, Mon.

Messrs. Walton, Watts & Co., Chartered Accountants, Manchester, regret to announce that Mr. Tom Walton, the senior partner and the founder of the firm, died on July 6. The practice is being continued under the same style by the surviving partners.

Messrs. Kingscott, Dix & Co., Gloucester and Evesham, and Messrs. A. J. Feek and Co., Pershore, announce that Mr. D. F. Barron, A.S.A.A., has been admitted into partnership.

Mr. Christopher Waller, F.S.A.A., has admitted Mr. William R. Wilson, A.S.A.A., into partnership. They are practising as Waller, Wilson & Co., Incorporated Accountants, at 27, Fitzroy Square, London, W.1, and at Potters Bar. Mr. Waller is also continuing his existing practice of Christopher Waller & Co.

Messrs. Clark, Battams & Co., Chartered Accountants, London, S.W.1, announce the admission into partnership of Mr. John C. Durnin, A.C.A., A.S.A.A., who has been associated with them for a number of years.

REMOVALS

Messrs. Arthur Stubbs & Spofforth, Chartered Accountants, have removed their Worthing office to Tudor Court, 52, Richmond Road.

Messrs. Jack Bobrov, Levien & Co. have moved to Jackson's Buildings, 55, Hout Street, Cape Town.

Mr. J. E. Jackson, Incorporated Accountant, announces that his office is now at 65, Stricklandgate, Kendal.

Mr. L. G. Harris, Incorporated Accountant, has removed his London office to 3, Red Place, W.1.

OBITUARY

FRANCIS DIX

Mr. Francis Dix, F.S.A.A., C.A.(S.A.), B.COM., died on July 1. He had been a member of the Society of Incorporated Accountants since 1922.

Mr. Dix was at one time senior partner in the firm of Francis Dix, Bird & Co., Chartered Accountants, Johannesburg, from which he retired to live at the Natal coast some years ago.

He was President of the Transvaal Society of Accountants in 1933, 1939 and 1945, and had been Chairman of the Revenue Advisory Committee and a member of several Government Commissions, including the Millin Companies Amendment Act Commision. Mr. Dix was for years Lecturer in Accountancy at the University of the Witwatersrand, and since his retirement continued to take an active interest in the Department of Accountancy and Commerce.

WILLIAM ARTHUR JUDGE

Mr. W. A. Judge, F.S.A.A., who died on August 10, at the age of 67, became a member of the Society in 1911 and had been in practice as an Incorporated Accountant in Skipton for nearly forty years. He was a member of Skipton Urban District Council from 1935 to 1947, being chairman in 1942, and for a considerable period chairman of the Finance Committee. He was formerly President of Skipton Rotary Club, secretary of the Skipton and District Cotton and Rayon Manufacturers' Association, and director of a number of industrial companies. For many years he was organist at Skipton Baptist Church, where his father had been minister.

WILLIAM WYLIE MACALISTER

We regret to record that Mr. W. W. Macalister, F.S.A.A., died on June 3 at the age of 84. He had been a member of the Society since 1896, and for 40 years from that date practised as an Incorporated Accountant in the City of London. He founded the Beach Hotel, Worthing, in 1915, and after retiring from practice he continued to manage the hotel, which was greatly enlarged. Although it had to be closed during the war years, Mr. Macalister was able to reopen it in 1946, and was active as a director till the day of his death.

HAROLD MCARTHUR

We have learned with regret of the death on May 26 of Mr. Harold McArthur, A.S.A.A., director of Christy & Co., Ltd., hat manufacturers, London. He became a member of the Society of Incorporated Accountants in 1921, after a number of years in the Liverpool and London offices of Messrs. Price, Waterhouse & Co.

Mr. McArthur was a keen freemason, and had been treasurer of the De Grey and Ripon Lodge since passing through the chair in 1949. He was for many years treasurer of his local Conservative Association.